United States Court of Appeals

for the Second Circuit

APPENDIX

75-7060
75-7641

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

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JAPAN AIR LINES CO., LTD.,

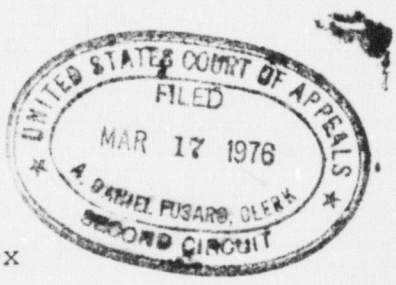
Plaintiff-Appellee,

-against-

VOLUME I

INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO, ("IAM"), et al.,

Defendants-Appellants.



ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

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JOINT APPENDIX

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PAGINATION AS IN ORIGINAL COPY

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PLAINTIFFS

JAPAN AIR LINES CO., LTD.

DEFENDANTS

INTERNATIONAL ASSOC. OF MACHINISTS & AEROSPACE WORKERS, AFL-CIO
IAM DISTRICT LODGE No. 151,
OGOSHI, FUSAO,
QUICK, ROBERT,
SAVINO, ROLLO
McLAUGHLIN, GREGORY
WHITBREAD, WILLIAM
SUZUKI, MAX
SHIRAISH, TATSUO
NAGAOKA, STANLEY
KARASHIMA, YOSHIAKI
HIROSHIMA, GARY
TARUMI, HIROSHI

CAUSE

Action Under Railway Labor Act For An Injunction

LN

ATTORNEYS

Polet[illegible]. Freidin, Prashker,
Feldm[illegible] & Gartner
777 3rd Ave. N.Y. 10017
688-3200

UNITED STATES COURT OF APPEALS
FILED
JAN 27 1975
J. DANIEL FUSARO, CLERK
SECOND CIRCUIT

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CHECK HERE IF CASE WAS FILED IN FORMA PAUPERIS	FILING FEES PAID			STATISTICAL CARDS	
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UNITED STATES DISTRICT COURT DOCKET

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DATE	NR.	PROCEEDINGS Pg#2 Judge Ward
1-13-75		Filed Complaint & Issued Summons
1-20-75		Filed Affidavits in opposition by Fusao Ogoshi, Robert T. Quick, & Sheldon Engelhard to pltffs. application for a preliminary injunction.
1-21-75		Filed Post Hearing Memorandum in opposition to pltffs. motion for a preliminary injunction.
1-23-75		Filed Defts. Notice of Appeal from Order dtd. 1/22/75, Temporary Restraining defts. (mailed notice)
1-24-75		Filed pltff's affdvt & Show Cause Order for a preliminary injunction-Ret. 1-16-75. -Ward, J.
1-24-75		Filed summons & affdvt of service on (LAM) 1-14-75.
1-24-75		Filed pltff's memorandum in support of motion for preliminary injunction.
1-24-75		Filed affdvt of Edw. A. Brill & supplemental affdvt of Shigeo Kasumi in support of motion for preliminary injunction.
1-24-75		Filed affdvt of Murry Gartner in support of motion for preliminary injunction.
1-24-75		Filed pltff's post hearing reply memorandum.
1-23-75		Filed pltff's bond undertaking on injunction ($50,000.) Royal Globe Insurance Co.
1-24-75		Filed transcript of record of proceedings of 1-16-75.
1-27-75		Certified Record to the USCA.
1-24-75		Filed Temporary Restraining Order. Ordered 1/31/75 unless this order be dissolved prior thereto, or extended therafter, the defts. & each of them, their members, etc. are hereby are restrained & enjoined as indicated. Ward J. (mailed notice)
01-28-75		Filed Order to Show Cause to extend Temporary Restraining Order. ret. 1/27/75. Ward J.
01-28-75		Filed Memo. End. on Order to Show Cause filed 1/28/75. Application granted in accordance with oral decision rendered on this date. So Ordered Ward J. (mailed notice) VEVL
01-31-75		Filed Defts. ANSWER.
02-05-75		Filed Order that the temporary restraining order issued on 1/22/75 is extended to 2/10/75. at 5.00 p.m. Ward J. (mailed notice) affidavit in support attached.
02-13-75		Filed Pltffs. Proposed Findings of Fact & Conclusion of Law on motion for preliminary injunction.
02-13-75		Filed Defts. Proposed findings of Fact & Conclusions of Law.
02-19-75		Filed Post Hearing Memorandum in opposition to pltffs. motion for a preliminary injunction.
02-19-75		Filed Transcript of Proceedings dtd. 1/16/75.
02-19-75		Filed Transcript of Proceedings dtd. 1/27/75.
02-19-75		Filed Transcript of Proceedings dtd. 1/22/75.
02-19-75		Filed Transcript of Proceedings dtd. 1/31/75.
02-19-75		Filed Transcript of Proceedings dtd. 2/4/75.
02-19-75		Filed Transcript of Proceedings dtd. 2/5/75.
02-19-75		Filed Transcript of Proceedings dtd. 2/6/75.
02-19-75		Filed Transcript of Proceedings dtd. 2/7/75.
02-19-75		Filed Temporary Stay Pending Appeal. Ordered that defts. & each of them, their members, etc. ar restrained & enjoined as indicated. & deft. associations forthwith issue notices & take such other steps as indicated. Ward J. (mailed notice)
02-19-75		Filed OPINION #41,909-Pltff's motion for a preliminary injunction is denied. Temporary restraining order is dissolved. The foregoing shall constitute the Court's findings of fact and conclusions of law. Settle order on one day's notice in accordance with this opinion---Ward, J. Mailed notices.
02-21-75		Filed Order. that pltffs. motion for a preliminary injunction is denied without prejudice to its renewal upon a showing, etc. & the temp. restraining order is [illegible] Ward J. (mailed notice) (Continued)

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75-0166 Japan Air Lines vs. Internat'l Assn. of Mech. et al 75-0166

D. C. 110 Rev. Civil Docket Continuation Pg#3 Judge Ward

DATE	PROCEEDINGS	Date Judgm
2-19-75	Certified 1st Supplemental Record to the U.S.C.A.	
02-06-75	Filed Stip & Order that the e , Notice of Settlement of Order be deemed a Notice of Motion for Resettlement & Order Denying Preliminary Injunction entered herein on 2/21/75,ret. on 3/21/75. So Ordered Ward J.	
03-07-75	Filed notice of ceritification & transmittal of the 2nd Supplemental Record to the U.S.C.A.	
03-11-75	Filed transcript of record of proceedings dated January 16,22, 1975.	
03-20-75	Filed Stip & Ordee that dfts. motion now ret. 3/21/75 adjourned to 4/15/75; & pltffs. motion to be made for entry of final judgment shall be made ret. 4/15/75. So Ordered Ward J.	
04-01-75	Filed transcript of record of proceedings dated January 27, 1975.	
04-01-75	Filed transcript of record of proceedings dated January 31, 1975, February 4,5,6, 1975, Feb. 7, 1975.	
04-11-75	Filed Stip. & Order adjourning deft's. motion for Resettlement & Order Denying Preliminary Injunction and Pltff's. planned motion for entry of final judgment until 5-13-75.....Ward,J.	
05-12-75	Filed Pltff's. affidavit in opposition to Defts'. motion for resettlement of order.	
10-16-75	Filed Memo. End. on unsigned order. Resettled order treated as a motion & denied as moot. Ward J. (mailed notice)	
10-16-75	Filed Final Declaratory Judgment.Ordered that deft. International Association of Machinists & Aerospace Workers, AFL-CIO, that paragraph D. of the Scope of Agreement between Japan Air Lines Co., Ltd. is amended as indicated;Etc. & the parties may voluntarily bargain concerning any Scope proposal. Ward J. Judgment Entered Clerk 10-17-75 Entered 10-20-75. (mailed notice)	
10-16-75	Filed Stip & Order that the trial on the merits be deemed advanced& consolidated with the evidentiary hearing on the pltffs. application for preliminary injunction,had on 1-16-75 & 2-4,5,6,& 7-75 etc. Ward J.	
11-13-75	Filed Defts. Notice of Appeal from the order dtd. 10-15-75. (mailed notice)	

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -x

JAPAN AIR LINES COMPANY, LTD.,

Plaintiff,

- against -

75 Civ. 166 R.J.W.

INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO ("IAM"); IAM DISTRICT LODGE NO. 151; FUSAO OGOSHI, individually and as Senior Business Representative of IAM District Lodge No. 151; ROBERT QUICK, individually and as Grand Lodge Representative of IAM; ROLLO SAVINO, GREGORY McLAUGHLIN, WILLIAM WHITBREAD, MAX SUZUKI, TATSUO SHIRAISHI, STANLEY NAGAOKA, YOSHIAKI KARASHIMA, GARY HIROSHIMA and HIROSHI TARUMI, individually and as representatives of a class consisting of all of plaintiff's employees represented by IAM and employed in the United States,

Defendants.

SUMMONS

- -x

TO THE ABOVE NAMED DEFENDANTS:

You are hereby summoned and required to serve upon POLETTI FREIDIN PRASHKER FELDMAN & GARTNER, plaintiff's attorneys, whose address is 777 Third Avenue, New York, New York 10017, an answer to the complaint which is herewith served upon you, within twenty (20) days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

S/ RAYMOND F. BURGHARDT
Clerk of the Court

By F.P. CASTELLANO
DEPUTY

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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JAPAN AIR LINES COMPANY, LTD.,

Plaintiff,

-against-

INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS AFL-CIO ("IAM"), et. al.,

Defendants.

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75 Civ.

VERIFIED COMPLAINT - CLASS ACTION

Plaintiff, by its attorneys Poletti Freidin Prashker Feldman & Gartner, as and for its Complaint herein, respectfully alleges:

1. Jurisdiction. This Court has jurisdiction of this civil act (a) under 28 U.S.C. §1331, since the matter in controversy exceeds the sum or value of $10,000, exclusive of interest and costs, and it arises under the laws of the United States, and (b) under 28 U.S.C. §1337, since it arises

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under an Act of Congress regulating commerce. The action arises under the Railway Labor Act, as amended, 45 U.S.C. §§151-188 (hereinafter referred to as the "RLA").

The Parties

2. Plaintiff is a Carrier by Air. Plaintiff Japan Air Lines Company, Ltd. ("JAL") is a corporation duly organized and existing under the laws of Japan, duly qualified to do business in the United States and duly authorized to transact business in the State of New York, and having offices and places of business at 655 Fifth Avenue, in the County of New York, and at John F. Kennedy International Airport ("JFK Airport") in the County of Queens. JAL is an air carrier as defined in the Federal Aviation Act of 1958, as amended, 49 U.S.C. §§1301-1542, holding certificates of public convenience and necessity issued pursuant to that Act, under which certificates it operates an airline system for the carriage by air of passengers, property and mail in overseas and foreign commerce. As such, JAL is a "carrier" as defined by Section 201 of the RLA, 45 U.S.C. §181, and is subject to the provisions of the RLA.

3. Size of Plaintiff's Commercial Operations. JAL's airline system has scheduled flights into and out of five cities in the United States, New York, San Francisco, Los Angeles, Anchorage, and Honolulu and maintains offices for the conduct of business in additional cities of the United States. Overall,

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JAL services more than twenty-five countries throughout the world. JAL has a fleet of some 88 airplanes, which, together with its ground facilities, represent an investment in excess of 675 million dollars. The revenues received by JAL from its passenger, cargo and mail operations annually are in excess of 900 million dollars.

4. Plaintiff's Services for Japanese Government. In addition to mail, JAL transports Self Defense Force and civilian personnel and equipment for the Japanese Government, and international communications and couriers for the Japanese Diplomatic Service, including those sent to and from the United States.

5. JAL's Employees. JAL employs a total of about 20,000 persons in its world-wide airline operations, including some 1400 employees in the United States. Approximately 215 of JAL's United States employees are represented by the defendant INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO ("IAM"), in the craft or class of Air Line Mechanics, including Ground Service and Ramp Employees, as certified by the National Mediation Board in Case R-3303, December 9, 1958. Approximately 60 of the JAL employees represented by the IAM are stationed at JFK Airport.

6. Defendant IAM. The defendant IAM is an unincorporated association of more than one thousand members, with an

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office and place of business at 420 Lexington Avenue in the County and State of New York. IAM, by its officers, agents, and employees, regularly transacts business in, among other places, the Counties of Queens and New York, in the State of New York. Since December 9, 1958, IAM has been and at all times mentioned herein was duly recognized by JAL under the provisions of the RLA as the representative of JAL employees in the United States in the craft or class of Air Line Mechanics, including Ground Service and Ramp Employees, as described more fully hereinafter.

7. Defendant IAM District Lodge No. 151. The defendant IAM District Lodge No. 151 ("District 151") has an office and place of business at 1449 South Beretania Street, Honolulu, Hawaii, and is an official administrative and operational arm of defendant IAM, created pursuant to provisions of IAM's Constitution and By-Laws. District 151 has jurisdiction over the members of the IAM employed by JAL in the United States. District 151, by its officers, agents and employees, regularly transacts business in among other places, the Counties of Queens and New York in the State of New York. District 151 acts on behalf of defendant IAM in the processing of grievances and in the administration of the labor agreement covering the craft or class of JAL employees represented by the IAM.

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8. The Individual Defendants. Defendant Robert Quick is Grand Lodge Representative of IAM. Defendant Fusao Ogoshi is Senior Business Representative of IAM District 151. Defendants Quick and Ogoshi are agents of IAM, representing the IAM in the negotiations over proposed changes in the existing labor agreement between JAL and IAM. Each of the following individual defendants is an employee of plaintiff, a member of the craft or class of employees of plaintiff represented by IAM, and a member of the negotiating committee representing JAL employees in the aforesaid contract negotiations between JAL and IAM, and, upon information and belief, resides at the address set forth opposite his name.

Name	Address
Rollo Savino	149-57 22nd Avenue Whitestone, New York 11357
Gregory McLaughlin	32 Winter Street Forest Hills, New York 11375
William Whitbread	34 Pennsylvania Avenue Long Beach, New York 11561
Max Suzuki	1909 California Avenue Wahiawa, Hawaii 96786
Tatsuo Shiraishi	98-1615 Kiawe Street Aiea, Hawaii 96701
Stanley Nagaoka	1703 Waiola Street Honolulu, Hawaii 96814
Yoshiaki Karashima	2628 Monterey San Mateo, California 94403
Gary Hiroshima	1410 7th Avenue San Francisco, California 94418
Hiroshi Tarumi	720 South El Dorado Street San Mateo, California 94402

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9. Class Action Allegations..Nature of Interest of Individual Defendants. Each of the named individual defendants who is employed by JAL has an interest in this suit in the nature of the interest of all of the employees of JAL represented by IAM. Each of said defendants is sued in his individual capacity, and each of said defendants is also sued as a representative of a class consisting of all employees of JAL represented by IAM, there being common questions of fact and law with respect to all members of the class, as appears more fully hereinafter. Said employees are so numerous as to make it impracticable to bring them all before this Court. Each of said individual defendants who is employed by JAL has a joint and common interest with, and can and does fairly represent and will fairly and adequately protect the interests herein of the JAL employees represented by IAM as a class. This action is properly maintainable as a class action under Rules 23(b)(1), 23(b)(2) and 23.2 of the Federal Rules of Civil Procedure.

Current Labor Agreement

10. Agreement with IAM. A labor agreement between JAL and IAM ("the Agreement") executed on May 18, 1973, remains in effect pursuant to the Railway Labor Act, but, absent the injunctive relief requested herein, will not prohibit a strike by JAL employees represented by IAM on and after January 23, 1975.

11. Employees Covered. The aforementioned Agreement covers JAL employees in the United States in the craft or class of Airline Mechanics, including Ground Service and Ramp Employees.

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JAL employees in the job classification of mechanic, plant mechanic, ramp serviceman, storekeeper, and leads in each of the above classifications, are covered by the Agreement.

12. Scope of Agreement. Article 1 of the aforementioned Agreement provides as follows:

"Scope of Agreement

A. The Union is recognized by the Company as the sole collective bargaining agent for those employees of Japan Air Lines Company, Limited based in the United States, its territories and possessions, who comprise the craft or class of Airline Mechanics, including Ground Service and Ramp employees, said Union having been certified as representing those employees by the National Mediation Board in Case R-3303 on December 9, 1958.

B. This Agreement is made between the Company and the Union to cover employees comprising the craft or class of Airline Mechanics, including Inspectors, Storekeepers, Ground Service and Ramp Employees, and Leads in said classifications, employed by the Company.

C. This Agreement is made to cover all work involved in the operation and/or maintenance of aircraft, or parts thereof, aircraft engines, ground equipment and facilities, loading, stowing and unloading of all cargo, and any work incidental thereto coming within the jurisdiction of the Union.

D. If, during the life of this Agreement, the Company should establish its own maintenance, ground service or stores facilities at any other base within the United States, its territories and/or possessions, the Company and the Union will meet and negotiate wage rates and other conditions to govern the employees at the new base only prior to, or as near as possible after, the opening of the facility."

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The Current Controversy

13. Duty under RLA to Make Agreements. Section 2, First of the RLA, 45 U.S.C. §152, First, provides:

> "It shall be the duty of all carriers, their officers, agents, and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof."

14. Service of Section 6 Notices. Pursuant to Section 6 of the RLA, on or about September 27, 1973, the IAM served a notice of intended changes in the Agreement. JAL served notice of intended changes in the Agreement on or about October 1, 1973.

15. IAM Proposes Changes in Scope of Agreement. The IAM in its Section 6 notice proposed some 75 changes in the Agreement most of which related to rates of pay, rules and working conditions of the JAL employees the IAM represents. In addition, however, the IAM proposed amending Article I, Scope of Agreement, so as to require JAL to hire its own employees to do work which is currently performed, and has always been performed, by other companies under contract with JAL. The IAM's Section 6 notice provided, in pertinent part:

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"Article I - Scope of Agreement

* * *

Paragraph D. amend to provide that during the life of this Agreement, the Company shall phase out the contracting of all work covered by this Agreement and employ its own personnel to perform such work."

* * *

16. JAL and IAM Negotiate Unsuccessfully. From November 6, 1973 to January 19, 1974, representatives of JAL and IAM met in four conference sessions for a total of some 14 days to negotiate concerning a new agreement. JAL at all times told the IAM that JAL was not legally required to and would not negotiate about decisions as to whether JAL would invest in new facilities and hire additional employees as demanded by the IAM. Despite consideration and discussion of the other proposals made by JAL and IAM in the period November 1973 to January 1974, JAL and IAM were unable to reach an agreement on a new contract.

17. National Mediation Board Takes Jurisdiction. JAL, therefore, made application on January 25, 1974 under Section 203 of the RLA to the National Mediation Board ("NMB"), invoking the mediation services of the NMB with respect to the dispute over proposed changes in JAL's agreement with the IAM. The NMB accepted jurisdiction over the said dispute, docketed it as Case No. A-9520, and appointed a mediator to assist in the parties' negotiations.

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18. JAL and IAM Meet in Mediation Sessions. JAL and IAM met in four joint mediation sessions conducted under the auspices of the NMB for a total of 21 days. These sessions were held in the period from June 25, 1974 to November 13, 1974. IAM continued to insist on its demand for the change of the "Scope" clause of the Agreement, and although JAL offered a complete proposal of changes in the Agreement which would be very costly to JAL and provide considerable additional benefits to the covered employees, no agreement was reached.

19. NMB Proffers Arbitration. On December 17, 1974, the NMB requested that the IAM and JAL submit the dispute over changes in the Agreement to arbitration in accordance with Section 5, First and Section 8 of the RLA, following the report of the Mediator that, despite his best efforts to bring about an amicable settlement, the parties had failed to reach agreement disposing of the dispute.

20. Arbitration is Accepted by JAL, Rejected by IAM. On December 24, JAL advised the NMB that it was willing to arbitrate issues involving rates of pay, rules and working conditions. JAL specified that "Scope" clause issues were not to be included in the arbitration agreement to be worked out by the parties, in accordance with JAL's position that the IAM's demanded change in the "Scope" clause was unlawful.

JAL subsequently received written notice from the NMB that the IAM had rejected arbitration of the dispute prior to December 24.

21. NMB Serves Notice of Termination of Its Services. By letter dated December 23, 1974, the NMB advised JAL and the IAM that, arbitration having been rejected by the IAM on December 17, it had exhausted all practical methods provided in the RLA for adjusting the dispute and served notice that its services had been terminated that day under the provisions of the RLA.

22. IAM Free to Strike on January 23, 1975. Since the last requirement of the procedures established by the RLA for the settlement of contract disputes is that after notice of termination of the NMB's services, both parties maintain the status quo for thirty (30) days following the said notice, unless retrained by this Court, JAL employees represented by IAM will be free to strike beginning January 23, 1975.

IAM's Unlawful Insistence on "Scope" Change

23. IAM Insists on JAL Concessions on "Scope". The IAM has insisted throughout negotiation and mediation and to the present time that JAL must agree to the change in the "Scope" clause of the Agreement as proposed by the IAM as a condition of reaching a new Agreement.

24. IAM's Scope Demand Directed at Expansion of IAM's Membership. The IAM's demand for change in the "Scope" clause of

the Agreement is a demand that JAL hire its own employees to perform work which has never been performed by JAL's own employees. The demand for change in the "Scope" clause is directed towards expansion of the IAM's own membership and its control of work, not its representation of employees.

25. IAM's Scope Demand Not Related to Rates of Pay, Rules or Working Conditions of JAL Employees. The IAM's demand for change in the "Scope" clause, as presented in the Section 6 notice and in subsequent negotiation and mediation sessions, does not relate to, affect, or concern the rates of pay, rules or working conditions of JAL's present employees, within the meaning of RLA Sections 2, First; 5 First (a); and 6. JAL has no obligation or duty under the RLA to bargain with the IAM over the IAM's proposed change in the "Scope" clause of the Agreement.

26. JAL Has No Duty to Bargain over Fundamental Management Decisions. The IAM, by its proposed change in the "Scope" clause of the Agreement, seeks to bargain with JAL over decisions concerning the scope of JAL's enterprise and the commitment of JAL's capital, which are fundamental management decisions unrelated to rates of pay, rules or working conditions of JAL's present employees. JAL has no obligation under the RLA to bargain with the IAM over the IAM's proposed change in the Agreement regarding "Scope".

27. Change Demanded by IAM Would Double JAL's IAM-represented Workforce. In order to perform all mechanical

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and ground service work at all of its United States stations with its own employees, JAL would need to hire some 235 additional employees, thus more than doubling the size of its workforce currently represented by the IAM. JAL would have to discontinue contracts, and replace with its own employees, work at its United States stations performed by contractors as follows:

San Francisco - United Air Lines performs JAL aircraft maintenance and plant (ground equipment) maintenance.

New York - United Air Lines performs JAL's aircraft maintenance. Allied Aviation Service International Corp. performs ramp handling for passenger flights. Airway Equipment Rental Co., Inc. ("Airway") performs plant maintenance work in connection with JAL passenger flights.

Los Angeles - United Air Lines performs aircraft maintenance. Mercury Service, Inc. performs ramp handling for cargo flights and Pan American World Airways, Inc. and Air Research Aviation Service Co. perform passenger ramp handling. Airway, Flying Tiger Lines, Inc. and Mercury Service, Inc. perform plant maintenance work.

Anchorage - Servair, Inc. performs all maintenance and ground handling work for JAL flights.

JAL employees have never performed any of the work which is now performed by contractors, as listed above.

28. JAL Capital Investment Required by IAM's Scope Demand. Before JAL could hire some 235 new employees to do the work as demanded by the IAM, JAL would need to spend some eight

million dollars ($8,000,000) for construction and purchase of additional facilities and equipment.

29. IAM's Bargaining Violates RLA Section 2, First. The IAM, its negotiating committee and the JAL employees it represents, by their insistence on their demanded change in the "Scope" clause of the Agreement, have failed to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules and working conditions, in violation of Section 2, First of the RLA.

30. Defendants' Unlawful Plan to Strike. On information and belief, defendants plan a strike against JAL following expiration of the RLA 30-day "cooling-off" period on January 23, 1975. Any such strike by defendants would be unlawful under the RLA because (1) defendants have not fulfilled their obligation under the RLA to make every reasonable effort to make an agreement and (2) an object of such strike would be to force acceptance by JAL of the IAM's unlawful demand that JAL change the nature of its enterprise by making the aforesaid capital investment of eight million dollars and hiring 235 new employees.

31. Damages and Irreparable Injury to JAL and to the Public. Unless restrained, the threatened strike by defendants will cause disruptions in plaintiff's operations, substantial inconvenience to plaintiff's passenger and cargo customers,

and irrecoverable great loss of revenues and profits, the total amount of which cannot be measured, and plaintiff will suffer irreparable injury to its reputation as a reliable international carrier of passengers and cargo. The threatened strike, if not restrained, will disrupt JAL's operations not just in the United States, but over much of its world-wide system.

32. JAL's Efforts to Resolve Dispute. JAL has observed, and is willing to continue to observe, all of the procedures provided and required by law to prevent the interruption of service on its lines and to settle the aforesaid lawful dispute insofar as it concerns the rates of pay, rules and working conditions of its employees, and has exerted every reasonable effort and is willing to continue to exert every reasonable effort to reach an agreement to terminate said dispute.

33. Participation in and Authorization of Unlawful Acts. Upon information and belief, defendants IAM and District 151, and each of the individual defendants, have participated in the unlawful acts already committed and will participate or induce participation in the threatened unlawful acts described, and the threatened and committed acts have been authorized and/or ratified by the members of the IAM.

34. Greater Injury to JAL. As to each and every item of relief sought herein, far greater injury will be inflicted

upon the public and upon JAL by the refusal to grant the relief sought herein than can conceivably be inflicted upon the defendants by the granting of the relief sought herein.

35. No Adequate Remedy at Law. JAL has no adequate remedy at law for the injuries inflicted and threatened by the defendants' unlawful conduct.

36. No Prior Application. No application for the relief herein sought or for similar relief has been made to any other court or judge of the United States or of any state.

37. Necessity for Restraint. Upon information and belief, the unlawful activities complained of herein will continue to be committed unless restrained.

38. Norris-LaGuardia Act Inapplicable. The acts complained of herein as having occurred or as having been threatened are unlawful and in violation of the Railway Labor Act and, therefore, the Norris-LaGuardia Act (29 U.S.C. §§101 et seq.) has no application in the premises.

WHEREFORE, plaintiff prays that the Court:

I. Issue a preliminary injunction, the same to be made permanent on final judgment:

A. Restraining and enjoining defendants and each of them, their members, officers, agents, servants and employees, and all persons acting in concert with them:

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1) from directly or indirectly insisting or demanding that JAL bargain with the IAM over the IAM's proposed change in the "Scope of Agreement" clause in the Agreement between JAL and the IAM, or over any similar proposed change regarding JAL's right to determine whether to hire employees, establish facilities, or buy equipment to perform work at any location in the United States; and

2) from, in any manner or by any means, calling, causing, authorizing, inducing, instigating, encouraging, conducting or engaging in any strike, concerted refusal to report to work or accept regular duty assignments, or any other concerted work stoppage, work slowdown, or interference with plaintiff's normal operations, or picketing of, by, or among any of plaintiff's employees employed in the United States until such time as JAL and the IAM have bargained over proposed changes in rates of pay, rules and working conditions in accordance with the requirements of the Railway Labor Act, and until the procedures of the Railway Labor Act have been fully exhausted, including, but not limited to, renewed negotiation between the parties, and mediation under the auspices of the

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National Mediation Board, free of any insistence that JAL bargain concerning the matters specified in the preceding paragraph.

B. Requiring the defendant associations to issue such notices and take such other steps as shall be necessary or appropriate to carry into effect the substance and content of paragraph "A" hereof, including, but not limited to the requirement that said defendants publicly withdraw and rescind any orders, directions, requests, suggestions, or threats to do any of the acts specified in paragraph "A" hereof; and

II. Grant final judgment against defendants and each of them, as prayed for herein, with costs and disbursements of this action, and provide such other and further relief in law and equity as may be proper.

Dated: New York, New York
January 13, 1975

POLETTI FREIDIN
PRASHKER FELDMAN & GARTNER

By_____
A Member of the Firm
Attorneys for Plaintiff
Japan Air Lines Company, Ltd.
777 Third Avenue
New York, New York 10017
Tel: (212) 688-3200

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VERIFICATION

STATE OF NEW YORK)
) SS.:
COUNTY OF NEW YOR)

SHIGEO KASUMI, being duly sworn, deposes and says:

I am Administration Manager, the Americas, for Japan Air Lines Company, Ltd., plaintiff herein.

I have read the Complaint herein, and the allegations therein contained are true to my own knowledge except as to those matters therein alleged upon information and belief, which allegations I believe to be true.

The reason this verification is not made by the plaintiff is that the plaintiff is a foreign corporation incorporated under a special law of the Japanese Diet and I am a managing agent thereof in the United States.

Shigeo Kasumi
SHIGEO KASUMI

Sworn to before me this
13th day of January, 1975

Edward A. Frill
Notary Public

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JAPAN AIR LINES COMPANY, LTD.,

Plaintiff,

-against-

INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO ("IAM"); IAM DISTRICT LODGE NO. 151; FUSAO OGOSHI, individually and as Senior Business Representative of IAM District Lodge No. 151; ROBERT QUICK, individually and as Grand Lodge Representative of IAM; ROLLO SAVINO, GREGORY McLAUGHLIN, WILLIAM WHITBREAD, MAX SUZUKI, TATSUO SHIRAISHI, STANLEY NAGAOKA, YOSHIAKI KARASHIMA, GARY HIROSHIMA and HIROSHI TARUMI, individually and as representatives of a class consisting of all of plaintiff's employees represented by IAM and employed in the United States,

Defendants.

75 Civ. 166 R.J.W.

ORDER TO SHOW CAUSE

Upon the summons and verified complaint herein and upon the affidavit of SHIGEO KASUMI, sworn to the 13th day of January, 1975, it is hereby

ORDERED, that the defendants and each of them appear before this Court at a Motion Part thereof, on the 16th day of January, 1975, at 10:00 A.M., in the United States Court House, Foley Square, New York, New York, Room 519, to show cause why the Court should not, under the provisions of the Railway Labor Act, 45 U.S.C. §§151-188, enter an order granting plaintiff a preliminary injunction pending final determination of this action as follows:

A. Restraining and enjoining defendants and each of them, their members, officers, agents, servants and employees and all persons acting in concert with them:

1) from directly or indirectly insisting or demanding that JAL bargain with the IAM over the IAM's proposed change in the "Scope of Agreement" clause in the Agreement between JAL and the IAM, or over any similar proposed change regarding JAL's right to determine whether to hire employees, establish facilities, or buy equipment to perform work at any location in the United States; and

2) from, in any manner or by any means, calling, causing, authorizing, inducing, instigating, encouraging, conducting or engaging in any strike, concerted refusal to report to work or accept regular duty assignments, or any other concerted work stoppage, work slowdown, or interference with plaintiff's normal operations, or picketing of, by, or among any of plaintiff's employees employed in the United States until such time as JAL and the IAM have bargained over proposed changes in rates of pay, rules and working conditions in accordance with the requirements of the Railway Labor Act, and until the procedures of the Railway Labor Act have been fully exhausted, including, but not limited to, renewed negotiation between the parties, and mediation under the auspices of the

National Mediation Board, free of any insistence that JAL bargain concerning the matters specified in the preceding paragraph.

B. Requiring the defendant associations to issue such notices and take such other steps as shall be necessary or appropriate to carry into effect the substance and content of paragraph "A" hereof, including, but not limited to the requirement that said defendants publicly withdraw and rescind any orders, directions, requests, suggestions, or threats to do any of the acts specified in paragraph "A" hereof; and

C. Granting such other, further and different relief to which the plaintiff may be entitled in the premises; and it is hereby further

ORDERED, that pursuant to Rule 26(a) of the Federal Rules of Civil Procedure, leave is hereby granted to plaintiff to take the deposition of any of said defendants upon service upon such defendants of a copy of this Order, with twenty-four (24) hours' written notice of the time and place of such taking; and it is further

ORDERED, that pursuant to Rule 4(c) of the Federal Rules of Civil Procedure, the following persons are hereby designated to serve all process in this action and this order to show cause and papers on which it is granted: Edward Sheriff, Anthony Herrera, Theo Larmond, Wayne Kuramoto, Rudolph Auslander, Joseph Insalaco, Stanley Aoyagi, Hiroshi Matsumoto, and it is further

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PERSONAL.

ORDERED that service of this Order and the papers on which it is made, on or before 5 o'clock, P.M., on the 14th day of January, 1975 shall be good and sufficient service.

Issued at 4:10 P.M. o'clock
P.M., on this 13th
day of January, 1975

New York, New York

/Robert J. Ward/
UNITED STATES DISTRICT JUDGE

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

JAPAN AIR LINES COMPANY, LTD. :

Plaintiff, : 75 Civ. 166 R.J.W.

-against- : AFFIDAVIT

INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO ("IAM"), et al., :

Defendants. :

----------x

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

MURRAY GARTNER, being duly sworn, deposes and says:

1. I am a member of the firm of Poletti Freidin Prashker Feldman & Gartner, attorneys for plaintiff Japan Air Lines Company, Ltd. ("JAL"), plaintiff in the above-entitled action, in which the Complaint was filed on January 13, 1975. I make this affidavit to demonstrate that good and sufficient reasons exist for bringing on plaintiff's motion for a preliminary injunction herein by order to show cause rather than by ordinary notice of motion. No prior application for the relief sought herein has been made to any Court or Judge.

2. The Complaint herein asks for injunctive relief against a strike threatened to commence on January 23, 1975, because the defendant union has not complied with the requirements

of the Railway Labor Act. Under the procedures of that Act, the parties are now in the final 30-day "cooling-off" period which will expire at midnight on January 22, 1975. Thus, it is impossible to give defendants the ten days notice of motion required by Rule 9(c)(2) of the General Rules of this Court, if the hearing on plaintiff's motion is to be held prior to January 23, 1975, so that the Court may determine whether to enjoin the commencement of a strike against JAL on that date.

3. It is respectfully submitted that the Court therefore should shorten the period of notice required to bring on the motion for a preliminary injunction, by issuing an Order to Show Cause returnable on January 20, thus allowing sufficient time for taking of oral testimony and consideration of legal argument before ruling on plaintiff's motion, prior to January 23, 1975.

Murray Gartner

Sworn to before me this
13th day of January, 1975.

Edward A. Brill
Notary Public

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JAPAN AIR LINES COMPANY, LTD., Plaintiff,	:	75 Civ.
-against-	:	AFFIDAVIT
INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO ("IAM"), et. al., Defendants.	:	

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

SHIGEO KASUMI, being duly sworn, deposes and says:

1. Deponent

I am Administration Manager, the Americas, for Japan Air Lines Company, Ltd. ("JAL"), plaintiff in the above-entitled action. My office is at 655 Fifth Avenue, New York, New York. My duties include responsibility for the personnel and labor relations administration for all JAL operations in the United

States, Canada, Mexico and South America. I make this affidavit in support of plaintiff's motion for a preliminary injunction as set forth in the Complaint and Order to Show Cause herein.

2. JAL's Agreement with the IAM.

A labor agreement between JAL and the defendant International Association of Machinists and Aerospace Workers, AFL-CIO ("IAM") (the "Agreement") has been effective since March 1, 1972 covering JAL's United States employees in the craft or class of Airline Mechanics, including ground service and ramp employees. Unless this Court grants the injunctive relief for which JAL has applied, however, that Agreement will not prevent a strike of JAL employees represented by IAM on and after January 23, 1975.

3. Negotiations for Changes in the JAL-IAM Agreement.

The need for injunctive relief exists because of the improper and illegal manner in which the IAM has negotiated with JAL over proposed changes in the 1972 Agreement, in violation of the requirements of the Railway Labor Act ("RLA"). As Administration Manager, the Americas, for JAL, I have responsibility for negotiating with the IAM and have attended all the negotiation and mediation sessions referred to herein as spokesman for JAL. As is explained in greater detail below, the IAM has sought to use the current negotiations over changes in the

rates of pay, rules and working conditions of the JAL employees it represents to expand the IAM's own membership by unlawful insistence on a demand that JAL fundamentally change its method of operations in the United States. The IAM has insisted, and continues to insist, that JAL establish its own facilities and hire its own employees to perform work at stations in the United States where such work has never been performed by JAL's own employees.

4. Classifications of Employees Represented by IAM.

JAL presently employs approximately 1,400 employees in the United States, of whom there are currently 212 in the craft or class of Air Line Mechanics, including Ground Service and Ramp Employees, represented by the IAM. Employees in the following job classifications are represented by the IAM and, pursuant to Article III of the Agreement, perform work as follows:

1) Mechanic -- inspection and maintenance of aircraft and aircraft engines and other components, receiving and dispatching of aircraft, and work in connection with other company machinery and mechanical devices.

2) Plant Mechanic -- inspection and maintenance of aircraft ground service equipment, automotive equipment, tools and Company machinery; minor repairs of

hangar and office buildings; painting of ground service equipment or offices.

3) Ramp Serviceman -- loading and unloading of cargo, mail and baggage, and other items; cleaning work on aircraft and on the ground; operation of automotive vehicles.

4) Storekeeper -- storeroom work including receiving, shipping, checking, issuing, storing of material, equipment and supplies.

5) Lead -- Leads in each of the above classifications perform additional duties of assigning work and instructing and supervising employees in a crew

5. JAL's IAM Employees at Four of Five Flight Stations in the United States.

JAL has flights into and out of five cities in the United States: New York, Los Angeles, San Francisco, Honolulu, and Anchorage. JAL's own IAM-represented employees currently perform work at four of the five flight locations as is shown below:

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	Number of JAL Employees				
	Maintenance	Plant Maintenance	Ramp Service	Stores	
Honolulu	20	4	63	3	
New York (JFK)	--	5*	48*	3	
San Francisco	--	--	60	3	
Los Angeles	--	--	--	3	
Anchorage	--	--	--	--	
TOTAL	20	9	171	12	212

*Work in connection with Cargo Operations only.

6. JAL's Current Contract Handling of Work at U.S. Mainland Stations.

At each of JAL's United States stations except Honolulu, some or all of the maintenance and ground-servicing of JAL's flights is currently performed by other companies pursuant to contractual arrangements with JAL. The work at each location is performed by JAL's own employees or by contractors as follows:

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	Aircraft Maintenance Inspection	Plant Maintenance	Ramp Service		Stores and Parts
			Cargo	Passenger	
Honolulu	JAL	JAL	JAL	JAL	JAL
New York	United(1)	JAL Airway(2)	JAL	Allied(3)	JAL
San Francisco	United	United	JAL	JAL	JAL
Los Angeles	United	Airway FTL(4) Mercury(5)	Mercury	Pan Am(6) AASC (7)	JAL
Anchorage	Servair(8)	Servair	Servair	Servair	Serva

(1) United Air Lines
(2) Airway Equipments Rental Co., Inc. -- performs plant maintenance at JFK airport except at Cargo Warehouse.
(3) Allied Aviation Service International Corp.
(4) Flying Tiger Lines, Inc.
(5) Mercury Service, Inc.
(6) Pan American World Airways, Inc.
(7) Air Research Aviation Service Co. -- performs cabin cleaning only at Los Angeles.
(8) Servair, Inc.

The IAM's demand in the current negotiations is that JAL hire new employees to do the work now being done by the eight companies as shown in the above table. JAL has estimated that it would have to hire approximately 235 new employees, thus doubling the number of employees represented by the IAM.

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7. Expansion of JAL's Work Force in the United States.

When JAL began scheduled flight service between Japan and the United States in February 1954, with twice-a-week flights between Tokyo and San Francisco, via Honolulu, it had no ground service employees of its own in the United States. United Air Lines performed all the maintenance and ground service work for the JAL flights, until JAL decided to and did hire its own maintenance and ramp service employees in Honolulu, approximately a year after JAL's flights to the United States began. United continued to perform all maintenance and ramp handling work at San Francisco, and at Los Angeles and Seattle where JAL inaugurated service in March 1959. In the following years, as JAL's operations expanded, ground service and maintenance work at stations other than Honolulu continued to be done by the companies under contract with JAL, until such time as JAL determined to hire its own employees to do some part of that work. As of now, those determinations have resulted in the arrangements at JAL's United States stations described in paragraphs 5 and 6 above. None of the work now being performed by companies other than JAL has ever been performed by JAL employees.

8. IAM Certified as Representatives of JAL Employees.

On December 9, 1958, the IAM was certified by the National Mediation Board as the representative under the RLA of the craft or class of Airline Mechanics, including Ground Service and Ramp Employees, employees of JAL. The first agreement concluded between JAL and the IAM covering these employees was effective March 1, 1959. Some 15 employees were covered by that first agreement, all of whom were stationed in Honolulu.

9. Scope Clause in 1959 Agreement.

The "Scope of the Agreement" between JAL and the IAM in 1959 was stated to be as follows:

Article I - Scope of Agreement

A. The Union is recognized by the Company as the sole collective bargaining agent for those employees of Japan Air Lines Company, Limited based in the United States, its territories and possessions (excluding Okinawa), who comprise the craft or class of airline mechanics, including ground service and ramp employees, said Union having been certified as representing those employees by the National Mediation Board in Case R-3303 on December 9, 1958.

B. This Agreement is made between the Company and the Union in respect of employees comprising the craft or class of Airline Mechanics, including Lead Mechanics, Inspectors, Utility Men, Storekeepers, Ground Service and Ramp Employees employed by the Company.

C. This Agreement is made to cover all work involved in the operation and/or maintenance of aircraft, or parts thereof, aircraft engines, ground equipment and facilities and any work incidental thereto coming within the jurisdiction of the Union.

D. If, during the life of this Agreement, the Company should establish its own maintenance, ground service or stores facilities at any other base within the United States, its territories and/or possessions (excluding Okinawa), the Company and the Union will meet and negotiate wage rates and other conditions to govern the employees at the new base only prior to, or as near as possible after, the opening of the facility.

Under the above Article, the Union was recognized as the representative of certain JAL employees, and the Agreement covered work "coming within the jurisdiction of the Union," i.e.,

work performed by JAL employees in the craft or class represented by IAM. This Article has remained essentially unchanged through six subsequent Agreements (except for the addition of the words "loading, storing and unloading of all cargo" in Paragraph C as of May 5, 1961, and a revision of classification titles listed in Paragraph B as of September 1, 1966).

The Current Contract Negotiations

10. Service of Section 6 Notices.

Pursuant to Section 6 of the RLA, the IAM served a notice of intended changes in the existing 1972-1973 Agreement on or about September 27, 1973; a copy of that notice is annexed as Exhibit 1. JAL served a notice of intended changes in the Agreement on or about October 1, 1973; a copy of that notice is annexed as Exhibit 2.

11. IAM's Proposed Changes Include Radical Revision of "Scope" Clause.

The IAM, in its Section 6 notice, proposed some 75 changes in the Agreement, most of which had to do with rates of pay, rules and working conditions of JAL's IAM-represented employees. IAM, however, further proposed amending Article 1, "Scope of Agreement", so as to require JAL to hire its own employees to perform maintenance and ground service work at all stations. The IAM's section 6 Notice provided, in pertinent part:

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Article I - Scope of Agreement

Paragraph D. Amend to provide that during the life of this Agreement, the Company shall phase out the contracting of all work covered by this Agreement and employ its own personnel to perform such work.

12. IAM's Insistence on Change in "Scope" Clause.

Negotiations over the proposed changes in the Agreement began on November 6, 1973, and continued over the course of more than a year for a total of some 14 days of negotiation and 21 days of mediation under the auspices of the National Mediation Board ("NMB"). From the very start, IAM representatives stated that the Union expected JAL to make substantial concessions on what they referred to as "scope", i.e., agreement to hire new employees. By the final mediation session in November, 1974, it became clear that regardless of what was resolved on all other issues, the IAM would not agree to a new contract unless JAL agreed to hire its own employees, who would be covered by the IAM contract, to perform the maintenance, ramp and ground service work at United States mainland stations. Despite progress on other issues raised by the respective Section 6 notices, the IAM's insistence on expansion of its own membership and jurisdiction through the device of change in the "scope" clause of the Agreement resulted in eventual deadlock in mediation, as is described in more detail below.

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13. Second and Third Negotiation Sessions.

The Second and Third Negotiation Sessions were held on November 26-28, and on December 15-18, 1973. At both sessions, the IAM reiterated its proposed change in "scope", and pressed JAL on its plans for adding new facilities. On December 15, JAL stated that it was currently planning to construct a new cargo facility at San Francisco, and that facilities for JAL's own plant mechanics would be housed in this building. The IAM was told that JAL had no other plans to open new facilities, because of the uncertainty of future flight schedules, the fuel crisis, and a mounting operating deficit. On December 17, IAM spokesman Fusao Ogoshi summarized the discussion on scope by stating that the union wanted all mechanic, ramp service, ground service and storekeeper work for JAL operations to be done by IAM-represented employees whom JAL would have to hire.

14. Fourth Negotiation Session.

The Fourth Negotiation Session took place January 15-19, 1974. Following extensive discussion of all proposals of both sides, the parties exchanged written responses and counterproposals. The IAM's final proposal included a condition that JAL agree to establish its own ground handling at Anchorage and Los Angeles within 90 days after an Agreement was signed.

15. JAL Requests Mediation.

On January 25, 1974, JAL applied to the National Mediation Board ("NMB") under Section 203 of the RLA, invoking the mediation services of the NMB with respect to the dispute over the proposed changes in JAL's agreement with the IAM. The NMB accepted jurisdiction over the dispute, docketed it as Case No. A-9520, and appointed a mediator to assist in the parties' negotiations.

16. First Mediation Session.

The first mediation session under the auspices of the NMB was held June 25-29, 1974. On June 27, the Company distributed a substantially revised proposal package, which dropped many of the Company's initial proposals and granted additional items to the Union. On June 29, the IAM, in rejecting the Company's proposals, emphasized that as long as "scope" was not conceded there would not be an agreement. The Company replied that it had no intention to open additional facilities and its position as to the IAM's proposal over scope remained unchanged.

17. Second Mediation Session.

The second mediation was held from July 20 through August 3, 1974. At the start of the session, Mr. Robert Quick, IAM Grand Lodge Representative, stated that in the previous

negotiations over the 1972-73 Agreement the bargaining committee brought back a "package" to the membership without concessions on "scope", and that that "package" was only narrowly accepted. He stated that since then the committee had agreed not to take back another package without scope concessions, and that while the Union committee was willing to discuss other issues, their position was unchanged. Mr. Quick further stated that they would not take back a package to the membership unless there were concessions on scope included.

18. Third Mediation Session.

During the third mediation session, from August 26 through September 3, 1974, the IAM emphasized again its insistence on obtaining concessions from the Company on "scope". On August 28, the parties reviewed the proposals still pending, and determined that seven Company proposals and 62 union proposals remained open. The IAM stated that even if there were only one open proposal remaining, there would still be a deadlock due to the scope issue. On September 3, the Union offered a compromise "final proposal", as follows:

"1. 5 years duration, effective November 1, 1973 to November 1, 1978.

2. JAL accept all items already agreed to.

3. JAL accept United Air Lines latest settlement (with the IAM) and every United settlement until November 1, 1978.

4. Within six months, JAL agree to install its own employees to do all contract covered work at all present and future stations within the 50 states."

The Union offer, including a commitment to follow unknown future contracts made by another Company, was unacceptable to JAL. JAL made a complete counter-proposal and asked the Union committee to take it to the Union membership for a ratification vote. The Union replied that it would take the proposal to the membership, but it would recommend that the package not be accepted. Once again, the IAM negotiators stated that unless there were some "scope" concessions, the committee would not recommend a "yes" vote. On September 10, 1974, the IAM notified JAL that the IAM members had voted to reject the Company's offer.

19. Union Bulletin Calls for Negotiations over "Scope".

On or about October 23, 1974, the IAM posted on bulletin boards at the various JAL stations a copy of a telegram from Fusao "Bill" Ogoshi, District 151 Sr. Business Representative, to John Peterpaul, General Vice President of the IAM. (A copy is attached hereto as Exhibit 3). Mr. Ogoshi stated that the NMB mediator, Walter Phipps, had suggested another meeting with JAL, and that Ogoshi "asked for what purpose when we know very emphatically company's refusal to bargain on Scope. Requested he call Kasumi, JAL decision maker and ask if he will bargain on Scope." Mr. Ogoshi concluded:

> "District 151 ~~[illegible]~~ demands proffer of arbitration and subsequent release by the board so we can go into productive negotiations during final stages of the count-down."

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20. Fourth and Final Mediation Session.

The fourth mediation session under the auspices of the NMB was held on November 12 and 13, 1974. At the start of the session, IAM International Representative Robert Quick stated that JAL's proposal had been rejected by the membership for three reasons: 1) the Union committee recommended a "no" vote; (2) the "scope" issue was unsettled and; (3) the Union wants a 20% wage increase. Over the course of the two-day session, JAL made concessions on some ten additional items including sick and occupational injury leave, grievance procedures, full medical and dental coverage for part-time employees, hours of service, overtime, meal periods, vacations, additional dental coverage, travel and moving expense, and job security. The IAM's response was simply to emphasize again that it would not reach any agreement without agreement on its "scope" demand.

21. JAL's Offer of Job Security Rejected Because of "Scope" Demand.

Because the IAM had portrayed its proposal to change the "scope" clause of the Agreement as somehow related to the job security of JAL's present employees, JAL, on November 12, offered a proposal which would provide the job security the IAM claimed it was seeking for its members. JAL's proposal was to permit the establishment of "substitute positions" so that if a layoff was necessary at one station due to excess manpower, JAL could

establish new positions at a different station which would be available for bidding only to the laid-off employees. The Union rejected this proposal, stating that it did not give anything on "scope". Mr. Quick questioned why the Mediator had called the session, if the Company had nothing to offer on "scope", and he threatened to strike and close down the entire JAL system over this issue. On November 13, 1974, Mr. Quick again stated that it did not matter what the Company offered, the Union would not take a package back to the members for a vote unless there was some "scope" concession. He stated to the NMB Mediator, Mr. Phipps, that if the Company did not move on "scope", the parties were deadlocked. Following further concessions and offers by JAL on rates of pay, rules and working conditions, Mr. Quick stated that if JAL would concede "scope" to the Union, all other issues would fall into place, thus acknowledging that the Union's demand to expand its own membership was the only remaining issue which was blocking agreement. Again, Mr. Quick reaffirmed that the IAM wanted a schedule under which JAL would cancel its present contracts and hire its own employees at United States mainland locations, and stated to the Mediator that if the Company would not make a reasonable proposal on "scope", the mediation should be adjourned and a proffer of arbitration made to the parties, under the RLA, the final required statutory step before the Union would be free to strike 30 days after rejection of the proffer.

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22. JAL States its Position to its Employees.

On November 26, 1974, JAL Vice President Kiichi Ito sent a letter to all of JAL's IAM employees explaining JAL's position in the contract negotiations, and summarizing the proposals it had made. (A copy of that letter is annexed hereto as Exhibit 4). JAL explained that despite the additional benefits JAL was willing to give its employees, the Union would not accept any contract unless JAL agreed to create new jobs for people who are not in JAL's employ and whom the Union does not even represent. Vice President Ito summarized why JAL had refused to bargain with the Union Committee over "scope", as follows:

> "The IAM is attempting to use negotiations which are supposed to be conducted for JAL employees whom it represents, to expand its own membership. The Union has demanded that we hire new employees at locations where we do not want to have new employees. The so-called "Scope" demand has nothing to do with better benefits to you -- JAL's present employees. As your representative, the IAM has no right to force JAL to negotiate for people who are not in our employ and have not designated the IAM to represent them. For that reason, the Company has told the Union Committee that we will not bargain on "Scope" or other issues not related to rates of pay or working conditions for our own employees."

23. NMB Proffer of Arbitration.

The IAM did not withdraw its demand for change in the "Scope" clause. On December 17, 1974, the NMB requested

that JAL and the IAM submit the dispute over proposed changes in their Agreement to arbitration, in accordance with the RLA, following the report of the Mediator that, despite his mediation efforts, the parties had failed to reach an agreement disposing of the dispute.

24. Arbitration Accepted by JAL.

I was in Tokyo, Japan when the NMB proffer of arbitration was received. Immediately on my return to New York, I authorized acceptance of arbitration of all issues relating to rates of pay, rules and working conditions of IAM-represented employees. I did not agree to arbitrate the IAM's "Scope" change demand. On behalf of JAL, the following message was sent by telex to the NMB on December 24, 1974:

> "In response to your letter of December 17, 1974, on Mr. Kasumi's return, he advises that JAL is willing to arbitrate issues involving rates of pay, rules or working conditions. Scope clause issues not to be included in arbitration agreement to be worked out between the parties."

25. IAM Rejects Arbitration. Parties Released from Mediation.

JAL subsequently received written notification from the NMB, dated December 23, 1974, that the IAM had rejected the NMB's proffer of arbitration on December 17, the same day it was made. The NMB stated that all practical methods provided in the RLA for adjusting the dispute had been exhausted, and

served notice that its services were terminated that day. I am informed that under the provisions of the RLA, in the absence of injunctive relief, the IAM will be free to strike against JAL thirty days after the NMB's termination of its services, i.e., on and after January 23, 1975.

26. JAL Intends to Continue Making Every Reasonable Effort to Reach Agreement in Further Negotiation Beginning January 14.

JAL has accepted the invitation of the NMB, made in the public interest (and without effect on the running of the 30-day period which began with the termination of the NMB's services on December 23, 1974), to meet with the IAM on January 14 in a final effort to reach agreement, and JAL intends to continue to exert every reasonable effort to reach agreement with the IAM. However, no agreement will be possible so long as the IAM continues to insist that JAL hire new employees at locations where JAL does not want or need new employees. According to the statements of the IAM representative to date, the IAM will continue to refuse any reasonable settlement unless its proposal for "Scope" change is accepted by JAL.

27. IAM Free to Strike on January 23, 1975 to Force Acceptance of Scope.

Under the terms of the RLA, I am informed that the IAM will be free to strike against JAL on January 23, 1975, in the absence of an agreement before that date, unless restrained

by this Court. Based on statements made by IAM representatives during negotiations and mediation, it is my belief that the IAM intends to strike JAL beginning on January 23 to force acceptance by JAL of its contract demands, including its unlawful proposal for change in the "Scope" clause.

28. Implementation of IAM's Scope Proposal Would Require Over Eight Million Dollars in New Facilities and Equipment.

In order to add facilities and equipment which would permit employees to be hired by JAL to perform maintenance and ramp handling work at stations where the work is currently contracted out, JAL would need to invest over eight million dollars in capital expenditures, according to recent estimates made by JAL management. This sum includes amounts necessary to provide facilities for aircraft maintenance, plant maintenance, and ramp handling at Anchorage and Los Angeles, for aircraft maintenance and plant maintenance at San Francisco, and for aircraft maintenance, plant maintenance and passenger ramp handling at JFK Airport in New York. The estimated $2.1 million for equipment alone includes purchase of such items as tractors, tow tractors, transporters, hi-lift loaders, container trailers, boarding stairs, water and toilet service cars, and hi-lift trucks for ramp handling, and specialized tools, work stands, tractors, cars and trucks for maintenance of B-747 and DC-8 aircraft at each station. Construction of necessary office space and covered equipment docks (where facilities are not available

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for lease) would cost an additional $5.9 million.

29. IAM "Scope" Proposal Would Require JAL to Double its IAM Workforce.

In order to perform all the mechanic, ramp and ground service work at all of its United States stations with its own employees, JAL would need to hire approximately 235 additional employees in classifications represented by the IAM, based on present and projected flight schedules for 1975, more than doubling the size of its present workforce represented by the IAM.

30. Damage to JAL by Threatened Strike.

Unless restrained, the strike threatened by the IAM to begin on January 23, 1975 will cause disruption to JAL's flight operations, inconvenience to JAL's passenger and cargo customers, irrevocable loss of revenue and profits of more than $100,000 a day, and irreparable damage to JAL's reputation as a reliable international air carrier of passengers and cargo. It is respectfully submitted that such a strike should not be permitted when the IAM has not made every reasonable effort to reach an agreement with JAL as required by the Railway Labor Act, because it has insisted to the very end on an illegal pre-condition to any agreement, namely, that JAL hire employees and make capital investments dictated by the IAM, to change the nature and extent of the enterprise JAL chooses to conduct.

Shigeo Kasumi
SHIGEO KASUMI

Sworn to before me this
13th day of January, 1975

Edward Reill
Notary Public

HAWAIIAN DISTRICT LODGE N.. 151

International Association of Machinists

HONOLULU LODGE NO. 1245
LOCKHEED LODGE NO. 1589

A. F. OF L.-C. I. O.
1449 SOUTH BERETANIA STREET
HONOLULU, HAWAII 96814

955-0093 • 955-7581

September 27, 1973

Certified Mail No. 842383
Return Receipt Requested

Mr. Shigeo Kasumi, Administration Manager
Japan Air Lines, American Region
655 Fifth Avenue
New York, New York 10022

Dear Mr. Kasumi:

In accordance with Article XXII of the Agreement between Japan Air Lines, Company, Ltd. and the International Association of Machinists and Aerospace Workers, AFL-CIO, and pursuant to Section 6 of the Railway Labor Act as amended, the Union desires to amend and modify the Agreement.

Enclosed herewith are the proposed amendments and modifications and the Union is prepared to meet with you for the purpose of negotiations.

I suggest that we have our first meeting in Honolulu on October 15, 1973.

Sincerely yours,

Fusao Ogoshi
Sr. Business Representative

FO/jh

cc: F. Waldner
R. Simpson
M. Yonemura
W. Kuramoto
R. Savino
Y. Karashima
M. Suzuki



Exhibit 1

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PROPOSALS OF THE INTERNATIONAL ASSOCIATION
OF MACHINISTS AND AEROSPACE WORKERS UNION
FOR MODIFICATION AND AMENDMENT TO THE COLLECTIVE
BARGAINING AGREEMENT WITH JAPAN AIRLINES COMPANY,
LTD.

September 28, 1973

Article I Scope of Agreement

Paragraph B. Add plant mechanics and radio & electronic mechanics.

Paragraph D. Amend to provide that during the life of this Agreement, the Company shall phase out the contracting of all work covered by this Agreement and employ its own personnel to perform such work.

Add new paragraph.
The Company agrees that the positions and work within the scope of this Agreement belong to the employees covered hereby and nothing in this Agreement shall be construed to permit the removal of positions or work from coverage of this Agreement or further to permit the Company to employ alien employees in such positions or work without written consent of the Union.

Add new paragraph.
The Company agrees that it shall not layoff any employees in the bargaining unit during the term of this Agreement.

Article III Classifications of Work

Provide for lead coverage at any and all work hours for all classifications.

Mechanic
Delete from Mechanic's work description, all duties that conflict with those of plant mechanics and radio and electronic mechanics.

Plant Mechanic
Delete - "He may also be required to assist aircraft mechanics perform work on an aircraft when the need arises."

Add new classification - Radio and Electronic Mechanic
The work of an R & E mechanic shall consist of work generally recognized as R & E mechanic's work performed in or out of the Company's shops, maintenance bases, and line service stations. Such work shall include reading of schematic diagrams both electrical and electronic, dismantling, assembling, repairing and overhauling all parts of aircraft radio equipments, electrical systems and components. An R & E mechanic must possess an FCC radio-telephone license, second class, and such other licenses as may be required by Federal regulations.

Storekeeper
Clarify and re-write job description.

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Article IV Hours of Service

Paragraph A. Amend to provide for all eight (8) hour work shifts with the meal period included.

Paragraph C. Delete 1,2, and 3.
Provide for bidding whenever the starting times of shifts are changed with shift schedules to remain unchanged for a minimum of 30 days and a maximum of 7 months.
Provide for bidding at least twice a year.
The above provisions will not apply to Honolulu station where starting times of shifts will be changed and bid once a year only.

Paragraph E. Provide for a 15 minute wash up time prior to punch out.

Paragraph F. Increase recall guarantee to 6 hours inclusive of 30 minute paid meal period after 4 hours.

Paragraph G. Provide for employee option to take early or late meal break and penalty pay at applicable overtime rate.

Article V Overtime and Holidays

Paragraph A. Provide for all overtime to be paid for at double time rate except on holidays to be paid for at triple time rate.

Paragraph B. Amend to conform with paragraph A.

Paragraph D. Provide for a 12 hour rest break between shifts including recall with employee option to take or not to take the 12 hour rest. An employee who takes the 12 hour rest will be guaranteed 8 hours pay at straight time.

An employee who elects to work without the 12 hour rest may work to the end of his scheduled shift and be paid for 8 hours at the applicable overtime rate or elect to punch out prior to the end of his shift and receive straight time rate for the remaining hours not worked on his shift.

Paragraph E. Add Lincoln's Birthday and provide for payment of holiday pay while on sick leave or other paid leave.

Paragraph F. Provide for premium pay of triple time for all work on a holiday.

Paragraph G, H, I, J and K. Clarify overtime rules and amend as necessary.

Paragraph M. Provide for a paid meal period for continuous work before regular hours.

Paragraph N. Add "Emergency work as defined herein is work involved in the protection of life and/or property."

Paragraph P. Insert after the word "Company" the words "at their own station"

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Article VI Travel Pay

Paragraph I. Add - When training is conducted away from the employee's work station, such training will not continue beyond 6 weeks without a return break.

Paragraph J. Delete entire paragraph.

Article VII Seniority

Open for clarification and amend as necessary.

Article VIII Vacancies

Paragraph G. Amend to provide for all expenses incurred by an employee on a voluntary transfer will be borne by the Company and such employee shall be transferred to the new station within 15 calender days from the date of the award.

Article IX Leave of Absence

Paragraph F. Increase paid funeral leave to 5 days and include brother-in-law and sister in law to immediate family.

Increase paid funeral leave in deaths of grandparent, aunt or uncle to 3 days.

Provide for additional two weeks of funeral leave without pay when needed

Increase childbirth leave with pay to 5 days with the selection of the days at the employee's option.

Article X Vacations

Paragraph A(2) Accrual
Amend to provide vacation shall be earned on the anniversary of the employee's hire date, to be taken in the year following such anniversary date.

Paragraph B. Vacation Allowances
Amend to conform to employee's anniversary date and provide for paid vacations as follows:

After completion of one but less than three years - twelve days.

After completion of three years - fifteen days and for each year thereafter - one additional day up to a maximum of thirty days.

Paragraph E. Use of Vacation Credit
Increase accumulation up to 30 days with option to take pay in lieu of vacation for all days in excess of 30.

Paragraph F. Scheduling
Correct selection of vacation by station seniority to system seniority and provide for no close out of vacation period during the vacation year.

Paragraph H. Vacation Advances
Amend to provide for employee to take their full vacation pay prior to going on vacation.

Article XI Sick Leave and Occupational Injury Leave

Paragraph A. Increase sick leave credit to two days per month with no limitation on accumulation.

Paragraph B. Conform to paragraph A.

Paragraph C. Delete last sentence.

New Paragraph. Provide for the payment of accumulated sick leave to employees upon termination. (voluntary or involuntary and retirement)

Paragraph E. Amend to provide for full pay for an employee on occupational illness or injury as long as he is covered by Workmen's Compensation Insurance and have his own doctor certify his disability for pay claim.

New Paragraph. Provide for long term disability insurance for employees who suffer illness or injury off the job paid for by the Company.

Provide for Company contribution of the employees share of their state disability insurance premium and list the benefits each employee is entitled to under such plans.

Article XII Free and Reduced Transportation

Increase pass privilege for employees and dependents and provide for first class travel when seats are available.
Provide for pass privilege for retired employee, spouse, widows, widowers.

Article XIII Grievance Procedure

Clarify and improve.

Paragraph M. Reduce to 12 months.

Article XIV System Board of Adjustment

Clarify and improve.

Article XVI Safety and Health

Increase Company contribution to $100. for employee physical examination.

Article XVII General and Miscellaneous

Improve pension plan to provide for early retirement with no actuarial reduction in benefits and include a death benefit provision.

Improve medical coverage to cover full cost of medical expenses.

Improve dental coverage to cover full cost of dental expenses and orthodontics.

Provide for optical plan coverage for employee and dependents.

Paragraph N. Insert the words "and other non-bargaining unit employees" after the word "officials".

Add- "Emergency as defined herein is work involved in the protection of life and/or property".

Paragraph Q. Freeze part-time employee hiring with no replacement for any terminations or when placed into full time positions.

Provide full medical and dental coverage for part-time employees.

Paragraph S. Add - In the event metric tools are required to perform any work covered by this Agreement, the Company shall either furnish the tools or reimburse the employee for the cost of such tools.

Article XVIII Wage Rules

Paragraph A. Provide for a substantial wage increase for each classification with full retroactivity.

Paragraph I. Increase afternoon shift premium to 31¢ and night to 39¢.

Paragraph J. Provide for pay at the highest shift premium for all hours paid for the week plus 10¢ per hour for each different starting time with a maximum limit of 3 starting times in a week.

Paragraph L. Increase license premium as follows:

FAA	A & P License	.....	20¢/hour
FCC	2nd class license	.....	20¢/hour
FCC	1st class License	.....	15¢/hour
JCAB	(DC-8) License	.....	15¢/hour
JCAB	(747) License	.....	15¢/hour

Paragraph M. Increase line premium pay to 15¢/hour and include all employees who work in the line area.

Paragraph N. Reactivate C. O. L.

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Paragraph O. Increase longevity pay to 3¢/ year with no cap.

New Paragraph.
Provide for lead pay of 10% above base rate.

Article XIX Severance Allowance

Paragraph A. Amend as follows: Any employee covered by this Agreement with one (1) or more years of service and who is laid off or retires, shall receive severance pay as provided in paragraph B of this Article, subject to the limitation set forth herein.

Severance pay shall not be paid in the event:

Delete item 3 in entirety and the words "or retires" in item 6.

Paragraph B. Double the current severance allowance for the listed years of service.

Article XXII Effective Date and Duration

Eighteen (18) month agreement, effective November 1, 1973 through April 30, 1975.

JAPAN AIR LINES
AMERICAN REGION EXECUTIVE OFFICE
655 FIFTH AVENUE, NEW YORK, N.Y. 10022
TELEPHONE: 212 758-8850
CABLE ADDRESS: JAPANAIR NEW YORK

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October 1, 1973

Mr. Fusao Ogoshi
Sr. Business Representative
IAM & AW, District Lodge 151
1449 S. Beretania Street
Honolulu, Hawaii 96814

Dear Mr. Ogoshi:

In accordance with Article XXII of the Agreement between JAL and IAM & AW and as provided in Section 6, Title I of the Railway Labor Act, this letter is to serve notice of intended changes in said agreement.

1. Article III, Classification of Work

In each description set forth in the agreement, change as follows:

a. A lead shall be maintained on duty when more than (3) three employees, excluding the lead, are assigned to a shift.

b. A lead not be required to lead and direct the work of more than (10) other employees, excluding the lead, assigned to a shift.

c. Amend to include in all job descriptions the words "but not limited to."

d. Amend language to the mechanic classification to provide that a mechanic must sign for his own work according to FAA requirements.

e. Amend Storekeeper job classification to provide that duties will be limited to handling aircraft replacement parts related to line maintenance.

f. Amend Plant Mechanic job classification to provide that duties include checking of oil, battery, water, and other preventive maintenance of ground service equipment.

g. Amend Ramp Serviceman job duties to include fueling of ground equipment and recording.

Exhibit 2

h. Amend all lead classifications to provide for one lead whenever two different shifts overlap and are working together at the same location.

2. Article IV, Hours of Service

a. Paragraph G - Amend to provide that a meal break will be given within the third (3rd) and fifth (5th) hours.

b. Paragraph G - Amend to provide that employees who are requested to start their lunch period more than one hour in advance of the starting time of their regularly scheduled lunch period or one hour after the end of their regularly scheduled luch period shall be allowed a paid meal period, or, at the Company's option, the employee's lunch period may be extended one-half hours.

3. Article V, Overtime & Holidays

Open the article for clarification and amendment as follows:

a. Paragraph A - Delete any reference to "a minimum of one (1) hour."

b. Paragraph B - Amend to provide for double-time pay for 2nd day-off work, if the first day-off has been worked.

c. Paragraph B - Amend to include "notwithstanding Article IV, Par. B., when Saturday and Sunday consecutive days-off are scheduled, Saturday will be considered as the first day-off and Sunday the second day-off."

d. Paragraph D (2) - Amend to include the words "for all hours worked" as follows: "If the employee is required to resume duty without having had a ten (10) consecutive hour break, he shall be paid at double-time for all hours worked...."

e. Amend Article IV, Paragraph F and Article V, Paragraph A as necessary, to clarify the distinction between recall and early start.

f. Paragraph I - Amend to change 3 hours to 4 hours.

g. Add new paragraph to read as follows: "Nothing herein shall be construed to require the Company to utilize a low man on overtime so that he would not have the proper rest break as provided in Article V, Paragraph D.".

h. Discuss and clarify Paragraph D to reach an understanding that 10 consecutive hours break between the finishing time of an employee's shift and the starting time of his next shift taken before or after a recall overtime that may have been worked, will satisfy this provision.

i. Paragraph G - Amend to provide that overtime distribution shall be in a rotational order rather than on the basis of overtime balances.

b. Paragraph Q - Amend to provide that the Company may employ part-time employees in all classifications who will be scheduled to work less than 5 hours per day.

c. Add the following to this Article: "Reasonable smoking and refreshments during hours of duty will be permitted in mutually agreed designated areas, provided an employee shall not leave the job to indulge in such smoking and refreshments without permission.

d. Add the following to this Article: "Employees are expected to present a neat appearance at all times while on duty or in uniform."

e. Add the following to this Article: "It is forbidden for any employee to engage in drinking alcoholic beverages while in uniform, or when on duty, or to come to work under the influence of alcohol or unauthorized use of illegal drugs."

f. Add the following to this Article: "Any meeting, between the Company and Union Representatives, called by the Union to discuss matters contained in the Agreement is understood to be considered Leave of Absence Without Pay for the duration of such meeting unless specifically stipulated otherwise."

10. Article XVIII, Wage Rules

a. Paragraph M - Eliminate the entire paragraph.

b. Paragraph N - Eliminate the entire paragraph.

c. Paragraph P - Amend the term "base pay" to include only Schedule A & B rate, license premium, and longevity.

Amend to eliminate shift and line premium from vacation pay, sick leave pay, occupational injury pay, severance pay, and other leaves of absence with pay.

d. Paragraph Q - Amend to eliminate the entire paragraph.

11. Article XXII, Effective Date and Duration

a. Review and rewrite to provide for a three (3) year agreement.

b. No increase in the wage or included benefit provisions of the Agreement is legally permissible before January 1, 1974. Therefore, the Company proposes that the Duration Articles of the Agreement provide that any such increases shall become effective March 1, 1974, or date of ratification, whichever is later.

12. Appendix E, Letter Agreement, No Furlough

a. Amend to eliminate this letter agreement.

During the negotiations, the Company proposes that both parties review the entire agreement to assure that all provisions and any implementation thereof will be in compliance with all Federal or State laws or regulations, and if in conflict, make all changes necessary to provide such compliance.

The Company is willing to meet at a mutually agreeable time and place.

Very truly yours,

Japan Air Lines Co., Ltd.

Shigeo Kasumi

S. KASUMI
Administration Manager
The Americas

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COPY

Oct. 23, 1974

Mr. John Peterpaul
General Vice President
IAM & AW
1300 Connecticut Ave.
Washington D.C. 20036

Dear Mr. Peterpaul:

Called Mediator Walter Phipps last night (Oct. 22nd). Said NMB suggested another meeting with JAL. Asked for what purpose when we know very emphatically company's refusal to bargain on Scope. Requested he call Kasumi, JAL decision maker and ask if he will bargain on Scope. Union will meet and will follow through and call me in a couple of days. After 36 days and nights of negotiation including 21 under mediation, District 155 cannot afford the luxury of fruitless meetings especially since the meeting on January 19, when JAL walked out on us and said they will not pay for lost time of three members for whom they agreed to pay on our first meeting in November (1973).

Regarding reimbursement of my air fare, has also been denied as of that date. Needless to say, members are very upset. Request immediate clarification of this matter before NMB.

District 155 demands proffer of arbitration and subsequent release by the board so we can go into productive negotiations during final stages of the countdown.

Bill Ogoshi

Exhibit 3

JAPAN AIR LINES
AMERICAN REGION EXECUTIVE OFFICE
655 FIFTH AVENUE, NEW YORK, N. Y. 10022
TELEPHONE: 212 758-8050
CABLE ADDRESS: JAPANAIR NEW YORK

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November 26, 1974

TO ALL IAM-REPRESENTED EMPLOYEES:

Since the end of the specific term of the Agreement between Japan Air Lines Co., Ltd. and the IAM & AW on October 31, 1973, Company representatives and the Union negotiating committee have met eight times in sessions which lasted from 2 to 9 days. More than 30 full days have been spent in negotiations. Four sessions were direct negotiations between the Company and the Union, and four sessions were with the assistance of the National Mediation Board.

The most recent mediation session under the jurisdiction of the National Mediation Board was held in San Francisco on November 12 and 13, 1974. At that session, the Company offered many improvements on economic and non-economic issues, in addition to the package of proposals that was rejected by the vote of IAM members in September, 1974.

The Company had believed that its September offer was sufficiently better than what other airline employees have that it would be acceptable to you. We do not know whether you were fully aware of the terms of our September offer, but we want to be sure that you know what our offer is now, including the extraordinary additions we have just made, in our sincere effort to reach an agreement through negotiation with your representatives.

Despite the serious effects of greatly increased fuel and other costs, and reduced traffic, the Company has offered economic

proposals which are among the best in the airline industry. We recognize the inflationary pressures that trouble all employees and feel the need to give the best possible wages and benefits. The Company's policy has always been to maintain high wage standards. All you need to do is to look at the enclosed comparison of your wages with those of IAM-represented employees of competitive airlines and the other major domestic carriers to see that our offer puts you way out in front.

Management recognizes that the Company is like a team and that we must work together to overcome difficult situations. It has always been our policy therefore to attempt to avoid layoffs as much as possible. In addition to the outstanding economic benefits we offered as listed and described in the enclosed summary, including improved medical and dental benefits, increased vacations and sick leave, the Company recognized your concern for job security. On November 12, 1974, the Company offered an agreement which would permit the establishment of "substitute positions", enabling us to avoid any layoff.

Despite everything we offered, however, your Union representatives said that they had to have concessions on the "Scope" clause. Very simply, what that means is that regardless of the superior benefits we are willing to give you, the Union will not accept any contract unless we agree to create new jobs for people who are not in our employ and whom the Union does not even represent.

The IAM is attempting to use negotiations which are supposed to be conducted for JAL employees whom it represents, to expand its own membership. The Union has demanded that we hire new employees at locations where we do not want to have new employees. The so-called "Scope"

demand has nothing to do with better benefits to you -- JAL's present employees. As your representative, the IAM has no right to force JAL to negotiate for people who are not in our employ and have not designated the IAM to represent them. For that reason, the Company has told the Union committee that we will not bargain on "Scope" or other issues not related to rates of pay or working conditions for our own employees.

It should be clear from the offer we have made that the Company does not want a strike. All of us lose by a strike -- employees, customers, the public, and shareholders. We must maintain our competitive momentum and continued productivity in order to pay for the substantial increases being offered. Under the Company's offer, each of you would already be entitled to receive by December 1, 1974 from $800 to more than $1100 in retroactive pay.

Management went the extra mile on November 13th to avoid confrontation. It is up to you and your Union now.

A summary of the Company's package of proposals is enclosed.

Respectfully submitted,

Kiichi Ito
Vice President
The Americas

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Summary of JAL's Proposals

WAGES

The attached schedules show JAL proposed wages as compared to those of the trunk carriers which have already settled. All of our IAM-represented employees are covered by the rates shown in these schedules, which are the top of the scale in each classification.

COST OF LIVING

Japan Air Lines has offered a C.O.L. increase of one cent (1¢) per hour with a maximum of ten cents (10¢) for each .3 rise in the Consumer Price Index on October 1, 1974 and again on October 1, 1975. This means a certain C.O.L. increase of ten cents (10¢) per hour and a very likely additional ten cents (10¢) per hour, for a total of 20 cents per hour during the life of the Agreement. Other airlines which have agreed to this same amount are Continental, Eastern, Northwest, United and American.

FULL BACK PAY

Increases will be retroactive on all earnings since November 1, 1973, for all classifications and locations. The increased amounts (excluding earnings on overtime) during the 30 months in the new proposed Agreement will be as follows:

JOB TITLE	Total Incr. Amt. In 30 Months	Wage per Month (10-31-73)	Wage per Month (1-1-76)	Retroactive Pay (12-1-74)
(Mainland)				
Lead Plant Mechanic	$4,624	$1,232	$1,496	$1,140
Plant Mechanic	4,332	1,167	1,421	1,005
Lead Storekeeper	3,888	1,050	1,281	924
Storekeeper	3,648	985	1,206	811
Lead Ramp Svcman	3,888	1,031	1,262	924
Ramp Svcman	3,648	964	1,186	811
(Hawaii)				
Lead Mechanic	4,832	1,390	1,680	1,140
Mechanic	4,492	1,293	1,567	1,005
Lead Storekeeper	4,128	1,149	1,399	969
Storekeeper	3,784	1,082	1,321	811
Lead Ramp Svcman	4,040	1,134	1,383	924
Ramp Svcman	3,784	1,061	1,300	811

SCHEDULE A
MAINLAND

SCHEDULE B
HONOLULU

ead Plant Mechanic

fective Date	BN	CO	EAL	NW	UAL	JAL	Eff. Dte
-01-73	7.19	7.19	7.19	7.16	7.19	7.37	11-01-73
-01-74	7.19	7.46	7.46	7.43	7.46	7.62	03-01-74
-01-74	7.66	7.73	7.72	7.69	7.72	7.87	09-01-74
-01-75	7.87	7.94	7.93	7.90	7.93	8.07	03-01-75
-01-75	8.03	8.09	8.08	8.05	8.08	8.23	09-01-75
-01-75			8.13			8.43	01-01-76

Lead Mechanic

Effective Date	NW	UAL	JAL	Eff. Dte
09-01-73	8.11	8.14	8.28	11-03-73
01-01-74	8.41	8.44	8.53	03-01-74
05-01-74	8.71	8.74	8.78	09-01-74
01-01-75	8.95	8.98	8.98	03-01-75
05-01-75	9.12	9.15	9.29	09-01-75
			9.49	01-01-76

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ant
chanic

fective Date

-01-73	6.80	6.80	6.80	6.80	6.80	6.93	11-01-73
-01-74	6.80	7.05	7.05	7.05	7.05	7.18	03-01-74
-01-74	7.25	7.30	7.30	7.30	7.30	7.43	09-01-74
-01-75	7.45	7.50	7.50	7.50	7.50	7.63	03-01-75
-01-75	7.60	7.64	7.64	7.64	7.64	7.80	09-01-75
-01-75			7.69			8.00	01-01-76

Mechanic

Effective Date

09-01-73	7.50	7.50	7.66	11-01-73
01-01-74	7.76	7.78	7.91	03-01-74
05-01-74	8.03	8.05	8.16	09-01-74
01-01-75	8.25	8.27	8.36	03-01-75
05-01-75	8.40	8.43	8.64	09-01-75
			8.84	01-01-76

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SCHEDULE A
MAINLAND

Lead Ramp Service

Effective Date	EA	NW	UA	JAL	Eff. Dte.
09-1-73	5.90	5.92	5.92	6.16	11-1-73
01-1-74	6.12	6.14	6.14	6.36	03-1-74
05-1-74	6.33	6.36	6.35	6.56	09-1-74
01-1-75	6.50	6.53	6.52	6.72	03-1-75
05-1-75	6.62	6.65	6.64	6.88	09-1-75
11-1-75	6.67			7.08	01-1-76

Ramp Service

Effective Date					
09-1-73	5.52	5.52	5.52	5.72	11-1-73
01-1-74	5.72	5.72	5.72	5.92	03-1-74
05-1-74	5.92	5.92	5.92	6.12	09-1-74
01-1-75	6.08	6.08	6.08	6.28	03-1-75
05-1-75	6.20	6.20	6.20	6.44	09-1-75
11-1-75	6.25			6.64	01-1-76

SCHEDULE B
HONOLULU

Lead Ramp Service

Effective Date	NW	UA	JAL	Eff. Dte.
09-1-73	6.53	6.53	6.75	11-1-73
01-1-74	6.77	6.77	6.95	03-1-74
05-1-74	7.01	7.01	7.15	09-1-74
01-1-75	7.20	7.20	7.31	03-1-75
05-1-75	7.33	7.34	7.58	09-1-75
			7.78	01-1-76

Ramp Service

Effective Date				
09-1-73	6.11	6.12	6.28	11-1-73
01-1-74	6.33	6.35	6.48	03-1-74
05-1-74	6.55	6.57	6.68	09-1-74
01-1-75	6.73	6.75	6.84	03-1-75
05-1-75	6.86	6.88	7.10	09-1-75
			7.30	01-1-76

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SCHEDULE A
MAINLAND

Lead Storekeeper

Effective Date	CO	EA	NW	UA	JAL	Effec. Dte.
09-1-73	6.09	6.51	6.06	5.92	6.27	11-1-73
01-1-74	6.31	6.75	6.28	6.14	6.47	03-1-74
05-1-74	6.53	6.99	6.50	6.35	6.67	09-1-74
01-1-75	6.71	7.18	6.68	6.52	6.83	03-1-75
05-1-75	6.84	7.32	6.80	6.64	6.99	09-1-75
11-1-75		7.37			7.19	01-1-76

Storekeeper

Effective Date						
09-1-73	5.52	5.89	5.63	5.52	5.84	11-1-73
01-1-74	5.72	6.11	5.84	5.72	6.04	03-1-74
05-1-74	5.92	6.32	6.05	5.92	6.24	09-1-74
01-1-75	6.08	6.49	6.22	6.08	6.40	03-1-75
05-1-75	6.19	6.61	6.34	6.20	6.56	09-1-75
11-1-75		6.66			6.76	01-1-76

THE FIGURES SHOWN BELOW, INCLUDING 20 CENTS FOR COST OF LIVING INCREASES DEMONSTRATE THAT JAL'S INCREASED AMOUNT IS GREATER THAN THAT OF U.A.L.

JOB TITLE	UAL (9-1-75)		JAL (10-1-75)		JAL (1-1-76)	
	INCR. AMT.	INCR. RATE	INCR. AMT.	INCR. RATE (SAME AS UAL)	INCR. AMT.	INCR. RATE
(MAINLAND)						
LEAD PLANT MECH.	$1.30	18.6%	$1.32	18.6%	$1.52	21.4%
PLANT MECHANIC	1.24	18.8	1.27	18.8	1.47	21.8
LEAD STOREKEEPER	1.09	19.0	1.13	-----	1.33	21.9
STOREKEEPER	1.04	19.4	1.08	-----	1.28	22.3
LEAD RAMP SVCMAN	1.09	19.0	1.13	19.0	1.33	22.4
RAMP SVCMAN	1.04	19.4	1.08	19.4	1.28	23.0
(HAWAII)						
LEAD MECHANIC	1.45	18.4	1.47	18.4	1.67	20.8
MECHANIC	1.35	18.5	1.38	18.5	1.58	21.2
LEAD STOREKEEPER	1.20	18.9	1.24	----	1.44	21.7
STOREKEEPER	1.14	19.2	1.18	----	1.38	22.1
LEAD RAMP SVCMAN	1.20	18.9	1.24	18.9	1.44	22.0
RAMP SVCMAN	1.14	19.2	1.18	19.2	1.38	22.5

Sick Leave

Japan Air Lines has offered to increase the maximum sick leave accrual from 100 to 130 days. Presently the maximum at Braniff is 100 days, Continental is 80 days, Eastern is 90 days, Northwest is 90 days, United is 90 days.

Occupational Injury Leave

Japan Air Lines has offered to increase the maximum occupational injury leave accrual from 100 to 130 days. The present maximum at Braniff is 100 days, Continental is 90 days, Eastern is 90 days, Northwest is 90 days and UAL is 90 days.

Vacations

Effective January 1, 1975, Japan Air Lines has offered 4 weeks of vacation (20 working days) after the completion of 10 years of service and, after 15 years, one additional day annually, to 30 days after 24 years.

The following airlines will give 4 weeks (20 days) after completion of 13 years of service, 25 days after 20 years, and 30 days after 25 years effective January 1, 1975:

Eastern, American, United, Northwest, Braniff, as attached.

Group Insurance

Orthodontic Coverage - Japan Air Lines has offered a plan whereby both employee and dependent children would receive 60% of covered charges up to a maximum of $1000 per person. There is no deductible.

Braniff's plan pays 60% of covered charges, after a $50.00 deductible, up to $1000 per person.

Eastern pays 50% of covered charges, after $50.00 deductible, up to a maximum of $500.00 per person.

Western pays 50% of reasonable and customary charges up to $700.00 maximum per person.

United pays 50% of usual and customary charge up to $1000 maximum per person.

Dental Plan

The Company offers to improve dental coverage by increasing from 75% to 100% of covered expense as shown in the attached schedule of covered expenses.

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VACATION

Number of Work Days of Paid Vacation after:

AIRLINE	UNION	1 Yr.	5 Yrs.	10 Yrs.	15 Yrs. (13 Yrs.)	20 Yrs.	25 Yrs.
United	IAM	10	15	15	20 (13 Yrs.)	25	30
American	TWU	10	15 (4.5 Yrs.)	15	20 (13 Yrs.)	25 (19.5 Yrs)	30
Northwest	IAM	10	15	15	20 (14 Yrs.)	25	30
Braniff	IAM	10	15	15	20 (13 Yrs.) 20 Effec 1-01-75	25	30
Eastern	IAM	10	15	15	20 (13 Yrs.)	25	30

AIRLINE	UNION	1 Yr.	5 Yrs.	10 Yrs.	11Yrs	12Yrs	13Yrs	14Yrs	15Yrs	16Yrs	17Yrs	18Yrs	19Yr
JAL (Current)	IAM	10	15	16	17	18	19	20	21	22	23	24	25
JAL (Proposed)	IAM	10	15	20	20	20	20	20	21	22	23	24	25

20Yrs	21Yrs	22Yrs	23Yrs	24Yrs
26	27	28	29	30

COVERED SERVICE	COVERED EXPENSE	PRESENT 75% MAXIMUM PAYMENT	PROPOSED 100% MAXIMUM PAYMENT
Cleaning			
to Age 14	$ 6.00	$ 4.50	$ 6.00
14 and Over	$ 9.00	$ 6.75	$ 9.00
X-Rays			
Single Film	$ 4.00	$ 3.00	$ 4.00
Each Additional, up to 12	$ 1.00	$ .75	$ 1.00
Full Series	$ 17.00	$ 12.75	$ 17.00
Amalgam Fillings of Permanent Teeth			
One Surface	$ 8.00	$ 6.00	$ 8.00
Two Surfaces	$ 11.00	$ 8.25	$ 11.00
Extractions			
Single Tooth, Uncomplicated	$ 8.00	$ 6.00	$ 8.00
Single Tooth, Impacted	$ 45.00	$ 33.75	$ 45.00
Crowns			
Acrylic	$ 60.00	$ 45.00	$ 60.00
3/4 Gold	$ 60.00	$ 45.00	$ 60.00
Porcelain with Metal	$100.00	$ 75.00	$100.00
Root Canal Therapy			
Single Rooted Tooth	$ 45.00	$ 33.75	$ 45.00
Bi-Rooted Tooth	$ 60.00	$ 45.00	$ 60.00
Gingivectomy (Specialized Gum Surgery)			
Per Quadrant	$ 50.00	$ 37.50	$ 50.00
Complete Denture			
Upper	$155.00	$116.25	$155.00
Lower	$155.00	$116.25	$155.00

Long-Term Disability Insurance

Japan Air Lines has offered a plan that provides income when an employee is disabled for long periods of time. The plan pays 60% of the employee's salary up to a maximum of $1,500 per month. This benefit is payable after a 3 months (90 days) waiting period and is provided at no cost to the employee.

Pan American has a 6 months (180 days) waiting period and pays 60% of salary up to $1,500 maximum per month. Employees are required to contribute to this plan.

United has agreed to institute a plan effective 1-01-75 which would be paid by employees. The details as to coverage have not been announced yet.

Eastern has a 6 months (180 days) waiting period and pays 50% of salary up a maximum of $2,083. Employees are required to contribute to this plan.

Tool Box Insurance

Japan Air Lines has offered to increase this coverage from $600 to $1000 per tool box at no cost to the employee. This matches the agreements of Braniff, Continental, and United which are at $1000. Northwest is $900.

Shift Differential Premium

Japan Air Lines has offered to increase shift differentials to 24¢ for afternoon shifts and 32¢ for night shifts. The following airlines pay 21¢ and 28¢ respectively:

United, Continental, Eastern, Northwest, National

Severance Allowance

Japan Air Lines has offered to increase this allowance by two weeks for two years of additional service as follows:

13 years service ..... 14 weeks
14 years or more ..... 15 weeks

Continental's maximum is 11 weeks for 10 years or more. Eastern, United, and Northwest's maximum is 10 weeks for 10 years or more.

LEAVE OF ABSENCE FOR BIRTH IN FAMILY

The employee may take two (2) days off with pay within a period of ten (10) consecutive days commencing with the date his spouse is confined for childbirth.

FREE TRANSPORTATION FOR BUSINESS REPRESENTATIVE OF UNION

The Accredited business Representative and/or designee of the Union will, to the extent permitted by law, be furnished free transportation over the Company's system during his term of office for use in connection with his work in administering this Agreement.

FULL MEDICAL AND DENTAL COVERAGE FOR PART-TIME EMPLOYEES

Effective January 1, 1975, the Company will provide full medical and dental coverage for part-time employees.

ELIMINATION OF CLOSING OUT VACATION PERIODS

The Company will provide for no closing out of vacation periods during the year. However, if additional manpower is needed, the Company may postpone an employee's vacation by giving one (1) month's notice, except in cases of emergency.

LISTING OF ALL REASONS FOR ABSENCES

Employees on the following authorized leave of absences shall not be called for overtime and shall not be charged while on such status:

1. Sick Leave
2. Occupational Injury Leave
3. Union Business Leave
4. Training
5. Joint Union & Company Meetings
6. Vacation
7. Military Leave
8. Death in Family
9. Birth in Family
10. Jury Duty
11. Voting Time

FAMILY DEATH LEAVE

The death in family leave will be improved to include grandmother and grandfather in the immediate family (3 days) and brother-in-law and sister-in-law one (1) day.

VACATION PAY

100% of vacation pay will be paid prior to commencement of vacation.

RATIO OF PART-TIME EMPLOYEES

The Company may hire part-time Rampmen whose number shall not exceed thirty per cent (30%) of the combined total excluding Leads at San Francisco, and twenty per cent (20%) of the combined total excluding Leads at Honolulu and JFK.

DURATION OF CONTRACT

Japan Air Lines has offered a 30 months contract from 11/1/73 through 4/30/76. The contracts of United and Northwest are 26 months; American and Pan American are 27 months; Eastern is 28 months.

OVERTIME WITHOUT TEN HOURS BREAK

If an employee is required to resume duty without having had a break of ten consecutive hours, he shall be paid at double-time for all hours worked until he has had ten (10) consecutive hours off duty without loss of pay for working time occurring during such absence.

OVERTIME CALLED IN TWO HOURS BEFORE SCHEDULE

An employee called in 2 hours or more before his regular scheduled starting time shall be allowed 30 minutes to eat on Company time. Said meal period shall be as near to his regular scheduled starting time as practicable.

FULL TIME SENIORITY

If an employee is laid-off and exercises seniority to bump into part-time employment, he continues to accrue full-time seniority. If he refuses a recall to full-time, he loses his recall rights, but not his full-time seniority.

GRIEVANCE PROCEDURE

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The Company agrees to the Union's proposed format and language with modifications, as follows:

Step One (1)

Any employee having a complaint or grievance in connection with the terms of employment or working conditions, may present his complaint or grievance to the Steward or Committeeman of the Union, who in turn will discuss the matter with the employee's immediate Supervisor and endeavor to arrive at a satisfactory adjustment of the matter. The immediate Supervisor will give his decision within twenty-four hours after discussion of the issue.

Step Two (2)

If the Steward or employee is not satisfied with the decision of the employee's immediate Supervisor, the matter will, within ten (10) days of the decision, be appealed by the local Union Committee and/or the accredited representative, to the local station manager. Four copies of the signed complaint will be given to the station manager. The station manager will return two (2) signed copies with his decision to the Union within seventy-two (72) hours after oral discussion between representatives of the Company and the Union. Such oral discussion to be held within ten (10) days after presentation by the Union.

Step Three (3)

If the decision of the local station manager is not acceptable to the Union, the matter must be appealed by the accredited representative of the Union to the Company representative of the American Region within fifteen (15) days for his consideration and decision. The Company representative will render his written decision within fifteen (15) days after final presentation of the matter. Further appeal, if desired, shall be to the System Board of Adjustment provided for in Article XIV of this Agreement.

Paragraph L

Unless there is mutual agreement to extend time limits, non-compliance with time limitations set forth in the grievance procedure shall result in granting of the grievance, if by the Company, and denial of the grievance if by the Union.

All time limits for appeals and decisions will be exclusive of Saturdays, Sundays, and Holidays, unless otherwise stated.

APPENDIX A (RELOCATION EXPENSE)

To be amended to increase relocation expense for involuntary transfer as follows:

1. The Company will absorb expenses for packing, shipping, and insuring household goods up to a maximum of 7,000 lbs., plus an automobile.

2. If the employee drives from one station to another, the employee will be allowed mileage expenses of 12¢ per mile computed upon the most direct AAA route, plus parking fees, tolls, and incidental expenses for the automobile.

3. Where the employee is not driving, he will be allowed $34.00 per 24 hour day enroute expenses.

4. The employee and dependents will be allowed relocation expenses as follows:

(a)	Employee	- 7 days and $34.00 per day, totaling $238.00
(b)	Spouse and Children (12 yrs & over)	- Same allowance as employee.
(c)	Children under 12	- Half amount allowed employee.

5. Non positive free air transportation will be furnished employee, spouse and children, on the Company's airplane, or on an interline pass.

6. The employee will be allowed time off with pay up to 4 days at base pay. Part or all of these days may be taken before leaving the former station or after arriving at the new station.

APPENDIX B (PENSION PLAN STUDY COMMITTEE)

To be amended to set up 6-Member Union-Company Committee as follows:

The Company will establish a subcommittee composed of three (3) Company members and three (3) Union members, to be selected by both parties respectively. This committee will meet as necessary to develop a mutually agreeable revised Pension Plan, which if agreeable to the Union membership, will become effective as of January 1, 1976.

APPENDIX C (UNION-COMPANY SAFETY COMMITTEE)

Continues.

APPENDIX D

To be amended to establish Plant Mechanics at SFO and JFK as follows:

1. During the duration of this Agreement, the Company will establish the classification of Plant Mechanics to perform work in connection with the maintenance and repairs of the ground equipment at SFO as soon as possible.

2. At JFK, the Company will establish Plant Mechanics to perform work in connection with the maintenance and repairs of the ground equipment as soon as adequate space can be leased.

APPENDIX E

To be amended to provide for "Substitute Positions" as follows:

With regard to the Mediation Agreement reached on the parties hereto agree that upon receipt by the Company from the Union of written notification that such Mediation Agreement has been ratified, the Company:

1. During the period commencing with receipt of such notice of ratification and ending on April 30, 1976, simultaneously with any lay-off, may establish the same number of positions at stations covered by this Agreement other than the station at which the layoffs occur. Those positions need not be in the same classification as the positions from which the layoffs are made. Such positions shall be referred to herein as "Substitute Positions."

   Any employee given notice of layoff in the period up to April 30, 1976, in addition to his rights under Article VII K, shall have the right to take the Substitute Position created, at the time of his notification of layoff, in respect of the position affected by the layoff. No other employee shall have the right to bid for such Substitute Position, and if the Substitute Position is not filled by the procedure specified herein, within thirty (30) days of the time of its creation, it shall be cancelled.

2. The Company shall have no obligation to create a Substitute Position if a layoff is caused by:

   (1) An act of God.

   (2) A war emergency

   (3) Revocation of the Company's operating certificate or certificates.

   (4) Grounding of a number of Company aircraft which would require reduction in force.

(5) A strike.

(6) Picketing of Company premises.

(7) Work stoppage which would substantially interfere with the operations of the Company.

(8) Any cessation of work because of circumstances beyond the Company's control.

3. Disciplinary layoffs are specifically exempt from this agreement.

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AFFIDAVITS IN OPPOSITION

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SAME TITLE

STATE OF NEW YORK)
) ss.
COUNTY OF NEW YORK)

FUSAO OGOSHI being duly sworn, deposes and says:

I am the Senior Business Representative of District Lodge No. 151 of the International Association of Machinists and Aerospace Workers, AFL-CIO, (hereinafter "151"), which makes its office at 1449 South Beretania Street, Honolulu, Hawaii 96814, and I make this affidavit on behalf of the defendants in opposition to the motion of the Plaintiff for a preliminary injunction.

I am now and have been for approximately five (5) years Senior Business Representative of 151 and, prior thereto, from approximately 1959 through 1965, was a Business representative of 151.

As Senior Business Representative and, in addition to administering collective bargaining agreements between 151 and various employers, handling grievances, I participate in negotiations with various other employers including other airlines as well as the plaintiff, Japan Airlines (hereinafter "JAL"). The plaintiff, in its motion for a

preliminary injunction claims defendants have engaged in bad faith bargaining in that they have insisted on negotiating modification of the "Scope" contained in each of the previous collective bargaining agreements that have been negotiated between the parties in the past. The facts surrounding the relationship between the parties and the negotiations leading to collective bargaining agreements between them clearly establish that the defendants have not engaged in bad faith bargaining but, rather, have been concerned with factors relating to its members employed by plaintiff. In fact, the facts will establish that it is the plaintiff who has engaged in bad faith bargaining contrary to the intent enunciated in the Railway Labor Act (hereinafter "RLA"), and it is using this action as a subterfuge to obtain the help of the Court in attempting to prevent the union legally from exercising its statutory right of "self help" when the cooling off period specified by the RLA expires midnight, January 22, 1975.

The Court's attention is directed to the most recent agreement between the parties effective March 1, 1972, to October 31, 1973, entered into on May 18, 1973 (defendant's Exhibit A).* During the negotiations leading to that contract

* Unless otherwise specified, exhibits refer to those received in evidence at the hearing on the motion for a preliminary injunction held January 16, 1975.

(defendant's Exhibit A), Scope was one of the important issues proposed by 151 and remained so during the entire course of those negotiations. Scope has always been a matter of discussion and negotiation between 151 and the plaintiff. As a matter of fact, in the last written agreement (defendant's Exhibit A), as a result of negotiations the parties did enter into Letter Agreements pertaining specifically to the same items which are the subject of the Scope proposal presently under attack by the plaintiff. Appendix D of that agreement (page 67 and 68 of defendant's Exhibit A) provides as follows:

" APPENDIX "D"

JAPAN AIR LINES
American Region, Executive Office
655 Fifth Avenue
New York, N. Y. 10020
Telephone: (212) 758-8850
Cable Address: Japanair New York

March 20, 1973

Mr. Fusao Ogoshi
Senior Business Representative
International Association of Machinists
and Aerospace Workers
Hawaiian District Lodge No. 151
1001 Dillingham Boulevard, Room 210
Honolulu, Hawaii 96817

Dear Mr. Ogoshi:

This letter will confirm the understandings reached in Mediation Conferences regarding the

Union's request that the Company furnish a definite timetable for manning all Stations with Company employees, and for certain changes in ARTICLE I (SCOPE OF THE AGREEMENT).

The Company agrees that it will not contract out work at Stations where its IAM employees are currently doing work in the classifications (Crafts and Classes) covered by the Agreement, without prior notice to and negotiations with the Union (IAM).

The Company agrees to open certain jobs at JFK and at SFO, as follows:

A. Beginning no later than October 1, 1973, the maintenance work performed on the equipment in the Cargo Warehouse at JFK International Airport, New York, now performed by Mohawk, will be performed by employees of the Company who are members of the Union.

B. The Company employees in the classification of Plant Mechanics will perform work in connection with the maintenance and repairs of the ground equipment at SFO and at JFK as soon as the Company can lease adequate space to establish its own ground equipment maintenance facilities at each of said Stations.

The Company is currently making every effort to secure space for the ground equipment maintenance facilities at SFO and JFK and will continue its efforts. Periodic progress reports will be made to the Union in connection with this matter.

In addition, there will be no layoffs (furloughs) as set forth in the Letter of Agreement between Japan Air Lines Co., Ltd., and the Union.

Very truly yours,

JAPAN AIR LINES CO., LTD.
/s/ Shigeo Kasumi
Administration Manager
The Americas

"

Moreover, Appendix E of that Agreement (page 69 and 70) concerning "furlough" provides in part as follows:

> "This Agreement is made for and in consideration of the withdrawal by both parties of all disputed issues regarding the Scope of the Agreement arising out of the respective Section 6 Notices giving rise to the Mediation Agreement referred to above."

Article I of the contract is entitled "Scope of Agreement" to which Appendix D and E refer. During the course of those negotiations 151 was led to believe that officials of plaintiff were favorably considering our proposal. As a matter of fact until shortly before the termination of negotiations, the plaintiff's representatives at the negotiations always had held that plaintiff was seriously considering our proposed changes with respect to Scope. Significantly, as a matter of fact, even during the period when the Federal Mediator was working with us, plaintiff made no bones about the fact that it intended to negotiate with respect to Scope. Significantly, at no time during the course of those negotiations did anyone state, infer or imply that the proposed changes in the Scope provisions were not bargainable or were illegal or unlawful. As a matter of fact, they could not do so because it is bargainable and under no circumstances is it violative of the law. It is interesting

to note that during the course of this negotiation as was true during the course of virtually all of the present negotiations the plaintiff was represented by legal counsel versed in labor relations. As a matter of fact, while we were not represented by counsel at any of the negotiations of the prior contract or the current negotiations, the plaintiff at all times leading up to the execution of the last contract was represented by counsel and in the new negotiations for the new contract was represented by the same counsel up to Labor Day, Mr. Mas Yonemura, who acted as one of the witnesses to the signing of the Agreement (Defendant's Exhibit A, page 58) and is well-known in air-line labor circles.

In May 1973, when the parties entered into the Agreement (Defendant's Exhibit A), representatives of 151 made it clear to plaintiff that changes in the Scope provisions would again be proposed by it and, indeed, in the proposals of 151 attached to its Section 6 Notice dated September 27, 1973, 151 did propose changes in subsections of the Scope provisions of the Agreement.

As a result of the Section 6 Notices the parties agreed to commence negotiations on November 6, 1973, at the Princess Kaiulani Hotel in Waikiki, Hawaii. When the negotiations began on November 6, 1973, 151 was represented

by me as its chief negotiator and a Negotiating Committee consisting of Rocco Savino, Gregory McLaughlin, Max Suzuki, Tatsuo Shiraishi, Stanley Nagaoka, Yoshiaki Karashima, Gary Hiroshima and Hiroshi Tarumi. Robert Quick, a Grand Lodge representative of the International Association of Machinists and Aerospace Workers, AFL-CIO (hereinafter "IAM"), and defendant William Whitbread were not present at that time contrary to the testimony of Wayne Kuramoto given at the hearing before this Court on January 16, 1975. In fact, Mr. Quick did not attend any of the negotiations until January 15, 1974, and Mr. Whitbread entered the negotiations only in January 15, 1975. Mr. Whitbread succeeded Michael Puglia as a member of the Negotiating Committee and was present at most of the negotiation sessions. Plaintiff was represented that day by Mr. Yanamura who was its chief negotiator, Shigeo Kasumi, plaintiff's Administration Manager for North America, Wayne Kuramoto, Mr. Koashi, an Assistant Administration Manager for plaintiff, and Mr. Yamada, plaintiff's district manager in Honolulu.

At the first session, the first item of business was the question of "lost time pay" for committeemen during the negotiations. Then, 151 explained the purpose of each of

its proposals as set forth in the attachment to its Section 6 Notice, including its proposal regarding "Scope." It was explained at that time that 151 requested that work being performed at installations in Los Angeles, JFK, San Francisco and Anchorage, at some time during the course of the Agreement be performed by JAL employees represented by the IAM.

On the following day, November 7, 1973, with both parties being represented by the same persons present the previous day, the plaintiff made a proposal regarding lost time pay for committeemen, that it pay for six (6) committeemen. I told plaintiff's representatives that its failure to pay all of the committeemen for lost time was unfair since during past negotiations the entire Committee was paid lost time pay by the plaintiff and that no prior notice of elimination of paying lost time pay was given by plaintiff to 151.

Plaintiff caucused and agreed to pay for all nine (9) committeemen attending the November 6 and 7 negotiation meetings. In an effort to get on with serious negotiations, 151 accepted plaintiff's proposal for the balance of the negotiation meetings. It was at this meeting that plaintiff explained its proposals. At no time during the course of

the November 7 meeting was the subject of "Scope" brought up by either party.

When the parties met on November 8, 1973, the only items discussed were grievances relating to matters in Honolulu.

The parties' next meeting was November 26, 1973, at the Hilton in San Francisco, California. 151 was represented by the same persons representing it at the prior negotiations except that Mr. Puglia was absent. Again, Robert Quick was not present. Plaintiff was represented by Messrs. Yonemura, Kasumi, Karamoto, Hoashi, and Mr. G. Shibano, its District Manager for San Francisco. Only unresolved grievances between the parties were discussed that day. The parties met again on November 27, 1973, represented by the same people as the day before except that Mr. Puglia was also present. At that meeting plaintiff responded to grievances discussed the previous day. In addition, the parties discussed revision of the Scope clause. In particular, to amend Article I, paragraph B, to include the classification "Plant Mechanics". (This was subsequently tentatively agreed to by the parties.)

There was further discussion with respect to revision of paragraph D of Article I in conformance with 151's initial proposal. The plaintiff made no response either substantively or that the issue was not bargainable or that it was unlawful or illegal. Many other subjects were dis-

cussed that day including but not limited to areas of clarification of seniority language, additional birthday, extending the minimum guaranty hours of recall, wash-up time, bidding for new shifts, consecutive days off, separate classification for "Radio and Electronic Employees", job description for "Storekeeper", and a new layoff clause.

On November 28, 1973, the parties again met and were represented by the same persons with the exception of Mr. Shibano and the addition, on behalf of plaintiff, of Mr. Nakamura and Mr. Matsumoto. The parties discussed numerous issues including some pertaining to seniority, the voluntary transfers to other locations of persons laid off. Absolutely nothing was discussed with regard to "Scope."

Negotiations were subsequently resumed in San Francisco on December 15, 1973, 151 being represented by those representing it previously and plaintiff by Messrs. Yonemura, Karamoto and Hoashi. The entire day was devoted to a discussion relating to pension plans. "Scope" was not brought up.

On December 16, 1973, the same persons met and continued their discussion of pension plans. Additionally, there was further discussion regarding the insertion of the classification of Plant Mechanic in the Scope clause in ad-

dition to inserting a new classification of "Radio and Electronic Mechanic" in that same clause. Significantly, the parties did discuss a change in paragraph D of the Scope clause, 151 explaining that it was concerned with the possibility that JAL employees would be laid off while employees of Mercury (one of the contractors performing services for plaintiff in classifications covered by collective bargaining agreements) would continue to perform those duties which laid-off employees performed.

151 asked plaintiff if they would set a date for implementation of its use of JAL employees doing this work rather than having other companies performing those duties. This issue was not discussed in a vacuum since on that day and the following day, 151 was concerned with the possibility of layoffs resulting from the fuel crisis. In those discussions, specifically on December 17, 1973, 151 requested of plaintiff the number of man hours charged by Mercury Air Service and the UAL for services performed by them covering ramp employee and mechanics work at Los Angeles and San Francisco in order that we could bargain intelligently with respect to plaintiff's assertion that it must minimize manpower. Plaintiff absolutely refused to divulge this information contrary to the requirements of the RLA to bargain with the Union in good faith. Again, at no time during those negotiations nor indeed at the negotiations held on

November 18, 1973, did plaintiff state or in any way imply or infer that it was not obligated to bargain with regard to the "Scope" issue.

The parties subsequently met in Honolulu January 15, 1974 through January 19, 1974. At these meetings Grand Lodge Representative Robert Quick participated in the current negotiations for the first time. Although during this series of meetings the Scope issue was discussed among many other issues, the plaintiff again at no time stated it could not bargain with regard to Scope and, indeed, gave reasons for not wanting to accept the proposal. Specifically, it stated it needed flexibility in relation to use of its manpower. In connection with this, I respectfully refer you to the accompanying affidavit of Robert Quick, likewise in opposition to the plaintiff's application. It should be noted, however, that during these negotiations (January 19, 1974) there was discussion regarding the layoff of bargaining unit employees, specifically that there would be no layoff through February 1974. Obviously, it was a matter of great concern to the Union and its membership as to what would happen after February 1974. Late in the afternoon of January 19, 1974, it was determined that the parties were at an impasse. However, again in violation of the provisions

of the RLA, plaintiff informed 151 that it would negotiate only on call and would not bear any of 151's negotiating expenses despite the fact that until then it had always agreed to defray such expenses.

Plaintiff, on January 25, 1974, filed its application under the provisions of the RLA requesting that the National Mediation Board (hereinafter "NMB") come in and participate. In its application to NMB and in setting forth the original proposals of both parties and those proposals remaining open, plaintiff cited the Scope issue.

On June 25, 1974, the parties met in San Francisco with Mediator John Willits. 151 was represented by Mr. Quick and me in addition to the other members of the Negotiating Committee, except Mr. Nagaoka. Plaintiff was represented by Messrs. Yonemura, Kasumi, Kuramoto and Hoashi. The parties discussed many issues, including Scope. Plaintiff did not take the position that Scope was not bargainable or that it was illegal or unlawful nor did the Mediator tell us during 151's caucus that that was the plaintiff's position. Mr. Willits became ill before the mediation meetings beginning June 27, 1974 through June 30, 1974. However, the parties continued to negotiate. A second

mediation session was commenced on July 30, 1974 with Mediator Walter Phipps. All proposals submitted by both parties were reviewed in order to familiarize the Mediator as to what the issues were and, in fact, 151 was requested to rewrite contract language to conform to some of its proposals. Despite the testimony of Mr. Kuramoto at the hearing on the motion for a preliminary injunction, little time was devoted to questions of a pension plan.

The parties continued to meet on August 1 through August 3, 1974, during which time 151 dropped some of its proposals and amended others.

On August 3, 1974, plaintiff delivered a letter across the bargaining table informing 151 that nine (9) bargaining unit employees would be laid off as a result of the increased price of fuel. Plaintiff's action was taken despite the no furlough clause in the existing Agreement and constituted once again another violation of the status quo requirements of the RLA. Mr. Quick tried to negotiate an agreement to provide those persons being laid off the opportunity to perform similar functions at its other locations in the Continental United States. Plaintiff refused to negotiate such an agreement. It was at this point that Mr. Quick announced that he could not recommend to the mem-

bership that they ratify an agreement without a revision of the Scope clause which we believed to be necessary to protect their jobs.

The second mediation session terminated and the third commenced on August 26, 1974, in Honolulu at which time Mr. Phipps was informed by 151 of the plaintiff's intention to violate the no furlough provisions of Appendix E of the existing Agreement and the status quo provisions of the RLA. I informed plaintiff's representatives that we could have no meaningful negotiations so long as they violated an agreement which is in existence (defendant's Exhibit A, Appendix E) which had been ratified by the membership and that the membership was "up in arms" regarding the impending layoff of nine (9) bargaining unit employees and at that, Mr. Kasumi walked out of the meeting. This was not the last time that Mr. Kasumi walked out of a negotiation meeting. He did so on September 3, 1974. It is interesting to note, however, that when the topic of Scope was raised and discussed during the entire course of negotiations Mr. Kasumi did not walk out but actively participated in the negotiations. During this third mediation session and through September 3, 1975, numerous issues were again discussed some of which were settled and some withdrawn but, at no time again did plaintiff take any negative position

regarding the bargainability, legality or lawfulness of Scope or refuse to discuss same. I respectfully call the Court's attention to an action commenced in the United States District Court for the District of Hawaii by the defendant Unions as plaintiffs against plaintiff JAL as defendant as a result of the plaintiff's intention to lay off nine (9) bargaining union employees. As a result of that action, Civil 74-210, plaintiff reversed its position and withdrew its notice of intention to lay off the nine (9) bargaining unit employees.

Following the last negotiations in September, 151 presented to its membership for ratification plaintiff's last package. Over 97% of the membership voted to turn it down.

The fourth and final mediation sessions were held on November 12, and 13, 1974, and it was reported that Mr. Asada from the plaintiff's home office in Tokyo informed Mr. Kasumi that JAL's budget could not allow for any increase in personnel.

On November 13, 1974, plaintiff was again advised, as it had been the day before, that one of the reasons for the overwhelming defeat of the package offer submitted to

the membership in September 1974 was the failure to include a revision of the Scope provision. It was then, for the first time, in connection with any of the negotiations for any of the collective bargaining agreements between the parties that plaintiff stated that in essence Scope was none of our business and that it was a management right.

I respectfully submit to this Court that all of the issues presented between the parties were and are bargainable, that all of the issues presented were subject of bargaining right through the years and, secondly, plaintiff's motion for a preliminary injunction should generally be denied.

/s/ FUSAO OGOSHI

Sworn to before me this
18th day of January, 1975.

/s/ SHELDON ENGELHARD
Notary Public, State of New York
No. 30-1117360 Nassau County
Cert. Filed in New York County
Term Expires March 30, 1975

STATE OF NEW YORK)
) ss.
COUNTY OF NEW YORK)

ROBERT T. QUICK, being duly sworn, deposes and says:

I am an International Representative of the International Association of Machinists and Aerospace Workers, AFL-CIO, Air Transport Department (hereinafter "IAM") with offices at 312 Lexington Way, Burlingame, California 94010, and I make this affidavit on behalf of the defendants in opposition to the motion of the plaintiff for a preliminary injunction.

I have been employed in my present capacity since March 1968. Further, since 1946 until I became an International Representative, I was President and General Chairman of Air Line District 141, United Airlines, and prior thereto was employed as a Lead Mechanic for Capitol Air Lines. In my capacity as International Representative presently covering the territory of California and Hawaii and, in addition to the handling of grievances and engaging in organizational activities, I assist local Lodges of the IAM and their affiliated districts in their collective bargaining negotiations.

I have read the affidavit of FUSAO OGOSHI, sworn

to January 18, 1975, also in opposition to plaintiff's motion for a preliminary injunction. I confirm the accuracy of Mr. Ogoshi's affidavit with respect to those negotiations held January 15, 1974, and subsequent thereto. Prior to that date, January 15, 1974, I was not involved in any of the negotiations taking place between plaintiff and the IAM with respect to the current negotiations.

In my capacity as International Representative, I did participate in all of the negotiations sessions held between December 7, 1972 through May 18, 1973, when the parties executed the current Agreement. During those negotiations leading to the current Agreement, changes in the existing Scope provision were proposed by defendant Union, Local 151 (hereinafter "151"). At no time during those negotiations did any person on behalf of plaintiff question the bargainability, lawfulness or legality of that issue. In fact, meaningful discussions were held. Ultimately, concessions were made by plaintiff when it made a counter proposal wherein 151 did withdraw the Scope issue in return for a "no furlough" Letter Agreement (defendant's Exhibit A, Appendix E).* It was also during those negotiations

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* Unless otherwise specified, Exhibits refer to those received in evidence at the hearing on the motion for a preliminary injunction held on January 16, 1975.

that other Scope concessions were made by the parties which lead to an agreement set forth as Appendix D attached thereto.

I have reviewed plaintiff's moving papers and the allegations made and assert that at no time did I tell the plaintiff's negotiating team that, if the Scope issue were resolved all other issues would fall into place. I did, however, state that the Scope issue was important but it certainly was not the only unresolved major issue. During all the current negotiation sessions up to November 13, 1974, the subject of the bargainability, legality or lawfulness of the Scope provision was not broached nor did the plaintiff state that it would not bargain on that issue. Indeed, in the early part of the meeting between the parties on November 13, 1974, Mr. Shigeo Kasumi, plaintiff's Administration Manager for North America, asked 151 to put off further negotiations on the Scope issue, reserving it for the last item to be discussed and that the parties try to resolve all of the other issues, major or less important. 151, however, continued its request to discuss any and all open items, including Scope. Mr. Kasumi, at this point, stated that it was none of 151's business who does the work and went so far as to say that 151 employees are "lucky" to be doing the

work that they are presently doing and that if the plaintiff wanted to, it could lay off all of the people. It is no wonder that the parties determined, in the presence of the Mediator, that they were deadlocked.

Although not obligated to do so, 151 consented to meet with plaintiff beginning January 14, 1975, in a last ditch effort to try to resolve all open items even though the parties had exhausted all of the steps provided for in the Railway Labor Act (hereinafter "RLA"), and are in the midst of the 30-day "cooling-off period". The Federal Mediator who was sent to assist the parties was unable to attend the meeting scheduled for January 14, 1975. However, a meeting did take place, with the Mediator, on January 15, 1975.

At the resumed negotiations, 151's position is as it has always been, that it will discuss anything and everything. In response to a question posed by Wayne Kuramoto, then the actual spokesman for plaintiff, I responded that, while "Scope" rule is high on 151's priority list, the number one item was the wage increase. This order of priority is still the current position of 151 during the negotiations which are still in progress.

I call the Court's attention to the fact that, despite the plaintiff's action in bringing on this motion

for a temporary injunction, 151 is still engaged in meaningful collective bargaining. Indeed, only last night, January 17, 1975, two (2) issues were tentatively settled and one of 151's proposals withdrawn.

From November 13, 1974 until the present, I have been shocked at plaintiff's new position regarding its obligation to engage in meaningful collective bargaining on 151's proposals for a change in Scope rules since, over the years, while 151 has not achieved all of its goals in negotiating the Scope rule clause, concessions were made (defendant's Exhibit A, e.g., Appendices D and E) without alleging that there was no such obligation to negotiate as to those rules. In fact, it is not uncommon to negotiate such rules in the airline industry and, with few exceptions, every major airline carrier with which IAM has a collective bargaining relationship, has negotiated Scope rules, some of which are even broader than that which 151 here seeks to negotiate with plaintiff. At no time have any of these airlines ever remotely inferred that the Scope rules or changes in Scope rules were not appropriate subjects for collective bargaining.

By way of example, I call the Court's attention to a recent change in the Scope clause of an agreement between

IAM and United Air Lines (hereinafter "UAL"). As a result of the change, UAL for the first time established its own kitchen facilities at its installation in Las Vegas, Nevada, where previously those functions were carried out by a caterer using its own employees, not the employees of UAL.

Having been associated with the air line industry for many years, and engaged in collective bargaining in that industry, it is apparent to me that plaintiff here is using the issue of bargainability as a pretext to avoid its responsibilities mandated under the RLA.

151's prime concern in negotiating collective bargaining agreements and in seeing that they are properly administered is to protect the livelihoods and rights of its members including those employed by plaintiff. Job security as well as wages and pensions for people who may be retired are obviously of prime concern. In seeking concessions for changes in the Scope rules, 151, as the plaintiff is well aware, is cognizant of a very real situation which may affect the job security of its JAL members. As noted in Mr. Ogoshi's affidavit, plaintiff had intended to furlough nine (9) of its employees represented by 151. It was only as the result of negotiations and the necessity to bring on an action in the United States District Court for the District of Hawaii, where the IAM and 151 were plaintiffs and JAL was the defendant, Docket No. 74-210, that

the plaintiff rescinded its intended furlough. However, the defendants still maintain that as the result of certain factors, one of which is the high cost of fuel, the underlying concern of 151 has not evaporated. Indeed, in a discussion yesterday between the parties at the negotiating session in San Francisco, Mr. Kasumi admitted that as many as 20 of the 40 employees in Honolulu may be furloughed when airline schedules are next changed in April 1975. The contemplated schedule will eliminate many of the flights from Tokyo to the United States that previously stopped over in Honolulu. A change in the Scope rules as proposed by 151 will help alleviate the furlough of these and, perhaps, other JAL employees who are members of 151.

There is one further allegation raised by plaintiff in this action which relates to the alleged attempt by 151 to increase its membership by virtue of a change in Scope rules, and implying that to do so would be violative of the RLA and the rights of any future employees. Such a position is absurd in light of the history of the parties. That is, when 151 was certified in 1959 by the National Mediation Board as the collective bargaining representative of specified classifications of JAL's employees all of those employees were located in

Honolulu. Since then and under the collective bargaining agreements which have been negotiated between the parties from time to time as JAL expanded its locations to the Continental United States, employees in those classifications were deemed covered by those collective bargaining agreements and became members of the IAM. No question was ever raised by plaintiff that it was necessary to conduct an election to determine if those employees at those new locations desired to be represented by IAM nor was it necessary that IAM engage in a "card count" with regard to the employees at those locations. Indeed, both parties have always accepted accretion as it has always been accepted throughout the industry.

For all of the foregoing reasons, the Court is urged to deny plaintiff's application for a preliminary injunction.

/s/ ROBERT T. QUICK

Sworn to before me this
18th day of January, 1975.

/s/ SHELDON ENGELHARD
Notary Public, State of New York
No. 30-1117360 Nassau County
Cert. Filed in New York County
Term Expires March 30, 1975

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

SHELDON ENGELHARD, being duly sworn, deposes and says:

I am a member of the firm of attorneys representing the Defendants in the above action and I make this affidavit in support of the Defendants' position that Plaintiff's application for a preliminary injunction be denied.

This morning at 11:30 A.M. I received a telephone call from ROBERT T. QUICK, the International Representative of the International Association of Machinists and Aerospace Workers, AFL-CIO, who is handling the negotiations between the Defendants and Plaintiff, that yesterday (Sunday, January 19, 1975) the parties met in a further negotiation session at which time the Union withdrew four (4) of its proposals. At the same time, I am advised by MR. QUICK that MR. KASUMI, the Plaintiff's chief negotiator, said that the four (4) items withdrawn by the Union were insignificant but stated flatly that unless the Union withdrew its "scope" and "pension" proposals, the parties would not reach any agreement. Further, MR. KASUMI advised the parties that it was his intention to leave the negotiations tomorrow and

return to Tokyo. MR. KASUMI likewise stated, I am advised, that it doesn't matter what the Court rules in the present proceeding, he would not negotiate on "scope" under any circumstances. Last night after the negotiation session with the Plaintiff, I am advised, that the Union's negotiating committee agreed that it would today, when the parties met, withdraw seven (7) additional items. However, these did not include "wages", "scope" or "pension".

I respectfully submit that this is indicative of the intransigent attitude expressed in the opposition affidavits of MESSRS. QUICK and OGASHI and is but a further indication of the Plaintiff's failure to negotiate with the Defendants in good faith.

Wherefore I respectfully urge the denial of Plaintiff's motion for a preliminary injunction.

Sworn to before me this
20th day of January, 1975.

/s/ SHELDON ENGELHARD

SYLVAN H. ELIAS
Notary Public, State of New York
No. 31-1100025
Qualified in New York County
Commission Expires March 30, 1975

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- X

JAPAN AIR LINES COMPANY, LTD. :

Plaintiff, :

-against- :

INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO ("IAM"), et al., :

Defendants. :

- X

75 Civ. 166 (R.J.W.)

SUPPLEMENTAL AFFIDAVIT IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION

STATE OF CALIFORNIA)
: SS.:
COUNTY OF SAN MATEO)

SHIGEO KASUMI, being duly sworn, deposes and says:

1. Response to Affidavits in Opposition. I make this supplemental affidavit in response to certain contentions made by defendants during the hearing herein on January 16, 1975, and in the affidavits in opposition of Fusao Ogoshi and Robert T. Quick, sworn to January 18, 1975, and of Sheldon Engelhard, sworn to January 20, 1975, all delivered to plaintiff's attorneys at 3:00 P.M., January 20, 1975.

2. Defendant's Basic Denials Contradict Their Own Prior Statements. Both affidavits in opposition of the two chief Union negotiators, Mr. Ogoshi and Mr. Quick, tell the Court that (1) JAL, until November 13, 1974, never took

the position during the current negotiations that it would not bargain on the Union's "scope" demand (Ogoshi Aff., p. 14*; Quick Aff., p.2-3**); (2) JAL, up until November 13, 1974, in the current negotiations, in fact, did bargain on the "scope" demand and was quite willing to discuss it. (Ogoshi Aff., p. 2***; Quick Aff., p. 3****); and (3) in the 1972-73 negotiations, which resulted in Defendant's Exhibit A (the orange book), JAL never said that it would not bargain on the Union's demand for the same "scope" clause change the Union insisted on in the current negotiation, and, in fact, stated its willingness to bargain about it

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*"On November 13, 1974, plaintiff was again advised . . . that one of the reasons for the overwhelming defeat of the package offer . . . was the failure to include a revision of the Scope provision. It was then, for the first time, in connection with any of the negotiations for any of the collective bargaining agreements between the parties that plaintiff stated that in essence Scope was none of our business and that it was a management right."

**"During all the current negotiation sessions up to November 13, 1974, the subject of the bargainability, legality or lawfulness of the Scope provision was not broached nor did the plaintiff state that it would not bargain on that issue."

***"Scope has always been a matter of discussion and negotiation between 151 and the plaintiff."

****"Indeed, in the early part of the meeting between the parties on November 13, 1974, Mr. Shigeo Kasumi, plaintiff's Administration Manager for North America, asked 151 to put off further negotiations on the Scope issue, reserving it for the last item to be discussed . . . "

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(Ogoshi Aff., pp. 4-5*; Quick Aff., p. 2**). These statements, particularly with respect to the current negotiations, are irreconcilable with Mr. Ogoshi's completely contradictory statement made to Mediator Walter Phipps on October 22, 1974, and to the General Vice President of the IAM, Mr. John Peterpaul on October 23, 1974. Mr. Ogoshi then said that when Mr. Phipps suggested another meeting with JAL, he, Mr. Ogoshi,

> "Asked for what purpose when we know very emphatically company's refusal to bargain on Scope."

In Mr. Ogoshi's words, posted on bulletin boards at all JAL stations, a photographic copy of which is attached to this affidavit as Exhibit 3a (Exhibit 3 to Kasumi Aff.*** I being a more legible typed copy of Mr. Ogoshi's telegram),

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*"Significantly, as a matter of fact, even during the period when the Federal Mediator was working with us, plaintiff made no bones about the fact that it intended to negotiate with respect to Scope. Significantly, at no time during the course of those negotiations did anyone state, infer or imply that the proposed changes in the Scope provisions were not bargainable or were illegal or unlawful." Mr. Ogoshi does not even claim here that JAL did negotiate, only that it "intended to negotiate."

**"At no time during those negotiations [1972-73] did any person on behalf of plaintiff question the bargainability, lawfulness or legality of that issue. In fact, meaningful discussions were held."

*** Sworn to January 13, 1975 and filed with the moving papers.

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Mr. Ogoshi reported that in his conversation with Mr. Phipps, he

> "Requested he [Mr. Phipps] call Kasumi, JAL decision maker and ask if he will bargain on Scope."

3. Mr. Ogoshi's October 23, 1974 Telegram Establishes JAL Position on Non-bargainability of Scope Long before November 13, 1974. Plainly, Mr. Ogoshi's October contradiction of his present statement does not reveal merely a discrepancy of 22 days between when he now says the IAM became aware of JAL's position that the Scope demand was not a mandatory subject of bargaining, and when JAL actually took that position. In other words, it is not merely the difference between November 13, 1974 and October 22, 1974. For on October 22, 1974, Mr. Ogoshi said that the IAM knew "very emphatically" the Company's refusal to bargain on Scope. The last meeting between the Company and the Union, prior to October 22, had taken place on September 3, 197[4] (Ogoshi Aff., p. 13) and clearly a first refusal at that meeting to bargain about the "scope" demand would not have led Mr. Ogoshi to say that the Union knew "very emphatically" of the Company's refusal to bargain on Scope. Indeed, according to Mr. Ogoshi now, the Company did not refuse to negotiate on Scope on September 3, 1974, but, on the contrary,

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> "During this third mediation session [beginning August 26, 1974 (Ogoshi Aff., p. 12)] and through September 3, 1975 [sic], numerous issues were again discussed some of which were settled and some withdrawn but, at no time again did plaintiff take any negative position regarding the bargainability, legality or lawfulness of Scope or refuse to discuss same." (Ogoshi Aff., p. 13, emphasis added)

When, then, and how did Mr. Ogoshi acquire the certain knowledge on October 22, 1974 that plaintiff "very emphatically" refused to discuss the Scope demand? Was it in the second mediation session (July 30, 1974 - August 3, 1974), which Mr. Ogoshi discusses without mentioning that the Company refused to discuss the Scope demand? (Ogoshi Aff., pp. 11-12) Or was it in the first mediation session (June 25, 1974 - June 30, 1974) when, according to Mr. Ogoshi now,

> "The parties discussed many issues, including Scope," and "Plaintiff did not take the position that Scope was not bargainable or that it was illegal or unlawful nor did the Mediator tell us during 151's caucus that that was the plaintiff's position." (Ogoshi Aff., p. 11)

The obvious truth is that Mr. Ogoshi knew "very emphatically" on October 22, 1974 that the Company would not bargain on Scope because we had told him and the Union committee so "very emphatically" at all of our meetings during the current negotiations, just as we had in the prior negotiations for the 1972-73 agreement (Exhibit A).

4. The 1972-73 Negotiations. The 1972-73 Agreement (Exhibit A) was reached during mediation conferences in March, 1973, when the Union had apparently given the Mediator reason to believe that it would withdraw its Scope proposals, and without JAL in any way conceding an obligation to bargain over the proposed changes in the "scope" clause.

5. 1972-73 "Scope" Demand. The IAM, in its notice, under Section 6 of the RLA, of intended changes in the Agreement effective until March 1, 1972, proposed amending the "scope" clause of that Agreement to provide that maintenance and ground service work on JAL flights, wherever performed, comes within the jurisdiction of the IAM, and that JAL, according to a definite timetable, employ its own employees at stations where work was performed by other companies.

6. JAL's 1972-73 Response to "Scope" Demand. JAL's consistent response to the IAM's "scope" proposal during the 1972 negotiations was that JAL had no obligation to bargain with the Union over the management decision of whether to hire new employees. According to our notes of those negotiations, during the ninth negotiation session held on July 19 - 20, 1972, Mr. Susumu Saito, Senior Vice President of JAL, came from Tokyo to impress upon the Union negotiators

that the decision not to bargain with the Union over the nature, extent and size of JAL's direct operations had been made at the highest level of management. Mr. Saito stated that the question of whether JAL would perform its own work or contract the work out has always been determined by complete studies made of profit analysis, labor productivity, passenger and cargo traffic data, flight frequency and long- and short-term corporate management plans for both domestic and overseas routes. Mr. Saito stated that the Company stood on its conviction that it is a management right or prerogative to determine whether to establish its own ground-handling operations or to continue to contract out, and that the Company believed that it had no obligation to bargain with the Union about whether or not it should establish its own handling.

7. Subsequent Mediator's Proposal. JAL maintained its position throughout mediation beginning on December 8, 1972 and continuing through March, 1973, that, while further expansion of JAL facilities might occur in the future, the Company had no obligation to bargain over the subject with the Union. In late March, 1973, however, the NMB Mediator made a "Mediator's proposal" to both JAL and the Union in an attempt to break the logjam. It is the essence

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of the Mediator's function to consult with both sides until he may be able to suggest a solution which, as a practical matter, may be acceptable to both sides although in some respects contrary to the legal positions or principles each has expressed. Apparently, the Mediator had become persuaded that the Union would withdraw its "Scope" proposal if JAL agreed to a no lay-off clause for present employees, a bargainable issue, and agreed that the Company would hire five men to do the JFK Cargo Warehouse maintenance work in place of the contractor who was doing that work. The Mediator, in fact, made those two proposals to JAL plus a proposal that a joint committee be set up to study and make recommendations about all the work which JAL was contracting out. JAL rejected the third proposal, and relying on the Mediator's judgment that the Union would withdraw its "Scope" proposal, offered the terms which are now Appendix D and Appendix E to the 1972-73 Agreement. They were almost immediately accepted by the Union.

8. Appendix D and Appendix E Were Not Concessions to the Union's "Scope" Proposal. The letter agreement, included in the 1972-73 Agreement as Appendix E, is a simple no-furlough agreement for the duration of the

contract covering existing employees. There can be no doubt that it relates directly to job security and was, therefore, a proper subject of bargaining. Appendix D, the letter agreement signed March 20, 1973, contained three basic parts: (a) an agreement not to contract out work currently performed by JAL's IAM employees, without prior notice to and negotiation with the Union; (b) an agreement that maintenance work on the equipment in JAL's Cargo Warehouse at JFK Airport would be performed by JAL IAM-represented employees within six months; and (c) an agreement that when the Company was able to lease adequate space for ground equipment maintenance facilities, it would employ its own plant mechanics at San Francisco and New York. JAL's agreement to these three items, in no instance, resulted from bargaining over the Union's "Scope" proposals.

9. The Terms of Appendix D. The first part of JAL's agreement in Appendix D, that it would give notice and negotiate with the Union before subcontracting of work currently performed by its own employees, is only a statement of what the Company understood to be its legal obligation in any event. It had not been part of the Union's "Scope" proposals. The second part of the agreement, to allow a contract with Mohawk Maintenance Co. for preventive

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maintenance and repair work on the equipment in the JFK Cargo Warehouse to expire, involved the hiring of only five additional employees at a location where JAL already had over 50 of its own employees performing cargo-handling functions. Moreover, the change involved an almost insignificant capital expenditure of slightly over $5,000 for purchase of a drafting desk, signal generator, oscilloscope, AC generator and welder grinder, metal cutting shears, industrial vacuum cleaner and a workbench. None of the factors which JAL considered to be serious management concerns in making decisions on the scope of the enterprise, including capital investment and flight frequency and stability, were pertinent considerations in the change at the Cargo Warehouse. Similarly, as to the third part of the agreement, JAL had already independently decided to, and was attempting to, lease space for plant maintenance facilities at JFK and San Francisco, as is plainly stated in Appendix D. The Company merely put into writing that it would do what it had previously determined to do, i.e., hire its own plant mechanics for ground equipment maintenance at the two locations as soon as it could lease the necessary space, which it was seeking. In fact, JAL has not yet been able to lease the necessary space, and has, therefore, not hired its own plant mechanics for ground equipment

maintenance at either station.

10. Appendix D Did Not Result From Bargaining Over the Union "Scope" Demand. In sum, in 1972-73, JAL never wavered from its position that it had no obligation to bargain with the Union over the proposals for change in the "Scope" article. The ultimate agreement reached during mediation on Appendix D and Appendix E did not contain the concessions on "Scope," which the Union had proposed. Mr. Quick's opposing affidavit does not deny my statement (Kasumi Aff. I, ¶17) that in the second mediation session, he "stated that in the previous negotiations over the 1972-73 Agreement the bargaining committee brought back a 'package' to the membership without concessions on 'scope,' and that that 'package' was only narrowly accepted." (Emphasis Added)

11. Permissive vs. Mandatory Bargaining. In 1972-73, JAL recognized that the Union had a perfect right to request bargaining on any subject before impasse, and that only insistence on the proposed scope change past impasse, or conditioning an ultimate agreement on the scope proposal, would be unlawful. JAL was willing to act on the Mediator's suggestion and voluntarily offer the letter agreements before the parties were released from mediation. It did not engage in over-the-table bargaining over "Scope," or concede that this was a mandatory subject of bargaining. That situation

is simply not comparable to that in the current negotiations where the parties have already passed the point of impasse, have been released from mediation by the NMB, and JAL, in the absence of relief by this Court, will be compelled to bargain over Union proposals which are not mandatory subjects of bargaining.

12. The Contrast between the 1973 Mediator's Proposal and the Current IAM Demands. In 1973, during mediation and before impasse, the IAM accepted a Mediator's proposal that it drop its "scope" demands and that the Company agree to a no-furlough clause for existing employees. Yesterday, January 20, 1975, 28 days after mediation was ended after impasse, the IAM presented written proposals, a copy of which is annexed hereto as Exhibit 5.* Proposal 2 of Exhibit 5 sets out a complete schedule for JAL to hire the 235 new employees which will be required to do the work listed, many of whom are to be hired in 1976, after the end of the term of the agreement proposed by the Union in Proposal 74 and 75(c), i.e., October 31, 1975. In addition, the Union's Proposal 4 is that "Effective January 20, 1975 and extending through the life of this Agreement, the Company shall not furlough any employee, covered by this Agreement." In other words, under the pretense of job security for

* Numbered in sequence with exhibits to Kasumi Aff. I.

Honolulu employees, the Union says it must force the Company to hire 235 new employees in San Francisco, Los Angeles, Anchorage and New York, and in order doubly to protect the Honolulu employees it must have a no-furlough clause, under which the Company could not furlough not only the Honolulu employees, but the 235 new employees as well. Will we next be told in October, 1975, when we would have to negotiate again under the Union's proposed "Duration" clause, that JAL must hire an additional 250 employees in order to doubly protect the job security of the 235 employees we are now told we must hire to protect the job security of the 212 employees we now have?

13. IAM's Insistence on the "Scope" Change has Prevented its Bargaining on Major Economic Items. The IAM has pointed to some 35 items which remained open in the current negotiations on January 16, 1975, and claimed that its insistence on the proposed "scope" change cannot be said to have caused failure to reach agreement. Many of those items are minor demands customarily included in the Union's opening "laundry list" and readily dropped toward the end of negotiations to give the illusion of movement. What stands out starkly in these negotiations, however, is that the Union has used its "scope" demand to extract the Company's

AP 1

best offer (Kasumi Aff. I, Ex. 4), and then continued to say, on November 13, 1974, that there was no point in discussing the major economic items since there would be no agreement without "scope" concessions. Now, when the Company has challenged the Union's right to insist on requiring JAL to hire new employees, the Union's proposals on major economic items have escalated.

14. Escalation of Demands. Proposal 63 of Exhibit 5 hereto made yesterday is for a wage increase of 20 percent for each of two years. Proposal 68 calls for a cost-of-living adjustment continuously of 1 cent per hour for each .3 change in the Consumer Price Index. On January 19, 1974, however, the Union proposed a 10 percent wage increase in the first year of the contract, and a re-opener for the second year. And in the IAM's Section 6 notice, dated September 27, 1974 (Plaintiff's Ex. 1), the IAM proposed to "Reactivate C.O.L.," as a change in Article XVIII, Article N of the 1972-1973 Agreement. The prior cost of living clause, in Article XVIII, Paragraph N of the 1969-1972 Agreement, contained a limit on the amount of cost-of-living increase of 21 cents over the term of the contract, a so-called "cap" on the permissible increase. Now, the IAM has proposed a cost-of-living clause without a "cap." The IAM

has also proposed, for the first time, review and adjustment in wage rates continuously--in contrast to the semi-annual review which the past cost-of-living clause incorporated.

The Union has added or escalated other demands. In the area of vacancies, the Union tentatively agreed on September 3, 1974 to a Company counterproposal offering to transfer an employee within 30 days after he is awarded a new position, rather than the 15 days the Union had proposed in its Section 6 notice. The IAM has now added a totally new condition to this provision, which would credit employees with seniority on the new job on the first day after bids are closed rather than on the effective date of the position as stated in the bid. Another Union proposal which had been withdrawn during mediation on August 30, 1974 was reopened by the Union on January 17. This proposal was to remove the restrictions on severance pay for employees who fail to exercise their seniority so as to remain in the employ of the Company. Obviously, the Union meant what it said when it announced, on June 29, 1974 that there would be no agreement without "Scope." See Kuramoto Aff., Exhibit 1.

15. Defendants' Errors about my Statements. I understand there has been some suggestion by the defendants that JAL's telex to the NMB dated December 24, 1974, accepting the NMB's proffer of arbitration as to issues concerning rates of pay, rules or working conditions represented an offer by

JAL to bargain over the Union's scope proposals. Apart from the illogic of that suggestion, considering the clear position JAL had taken during negotiation and mediation, it does violence to the literal words of the telex message. I authorized the wording of that telex message to the National Mediation Board. As the telex (Plaintiff's Ex. 4) clearly states, the scope clause issues were not to be included in the arbitration agreement to be worked out between the parties. It is plainly the arbitration agreement which was to be worked out between the parties, not the scope clause issues. In a similar misunderstanding, Mr. Quick is reported to have said that I said that, regardless of the Court's decision herein, I would not bargain about the "scope" demand. What I said on January 20, 1975 was that the Company would not agree to hire the new employees which the Union demands it hire.

16. Irreparable Injury to JAL. The injury which JAL will sustain as a result of a strike by the IAM, if the strike is not restrained by this Court, goes far beyond monetary loss, substantial as the lost revenues and profits would be. JAL suffered an overall operating loss during this past fiscal year of approximately $100 million, due to increased fuel costs, loss of traffic and other factors. The additional loss of revenues and disruption of operations

not just in the United States but over much of its worldwide system which would be caused by a strike by the IAM, if allowed to continue for any length of time, could put JAL into a precarious financial situation threatening its present structure and operations. Moreover, a strike would severely impair and injure JAL's reputation and the goodwill it has earned as a leading international carrier by air capable of maintaining scheduled flights along designated routes. The loss of substantial business caused by diversion of passenger traffic and cargo from JAL to competing airlines will be extremely difficult, if not impossible, to recover following eventual termination of a strike. Furthermore, a strike by the IAM would disrupt and interfere with JAL's cargo, passenger and international mail services, to the great injury of JAL's passengers, customers and the general public.

17. Need for Injunctive Relief. It is respectfully submitted that the testimony taken in the hearing on January 16, 1975; the inherent contradictions in defendants' evidence offered in affidavits not subject to cross-examination, and defendant union's escalation of demands, combined with persistence in its illegal demand that JAL hire 235 new employees and make a substantial capital investment abundantly establish that defendants have not complied with their obligation under the RLA to "exert every reasonable effort to make and maintain" an agreement. They

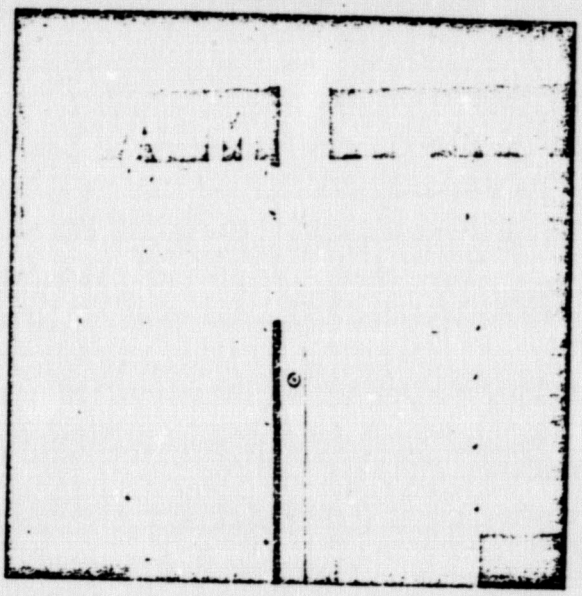
should be enjoined from striking until they have complied with that obligation.

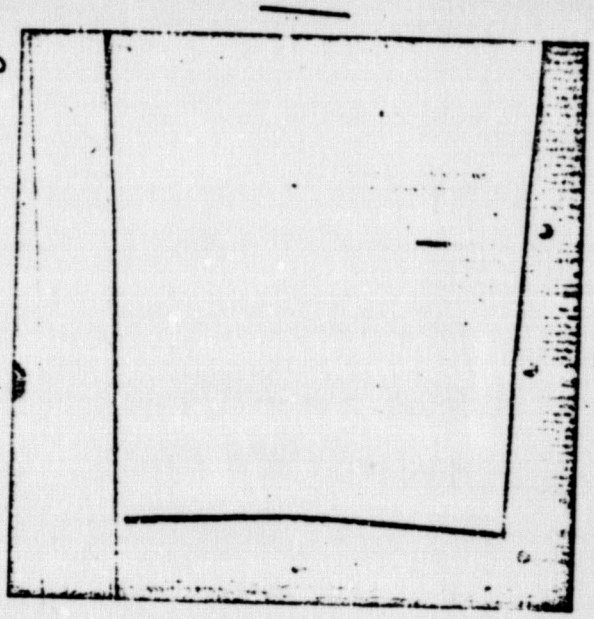
Shigeo Kasumi

Sworn to before me this
21st day of January, 1975

Notary Public

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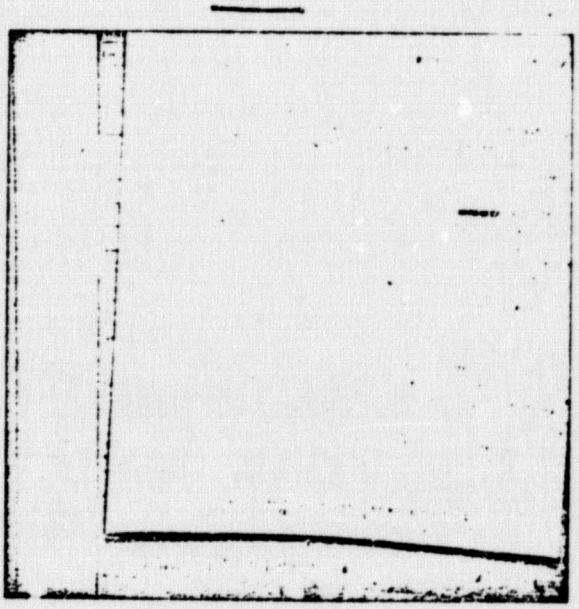


EXHIBIT 3A

A127

IAM PROPOSALS
1-20-75

Proposal No.
(2) JAL shall implement IAM proposal on scope as follows:

		Effective Date		
SFO	Plant & Ground Equipment		1-01-76	
	A/C Maintenance			7-01-76
LAX	Ramp & Cargo	7-01-75		
	Plant & Ground Equipment		1-01-76	
	A/C Maintenance			7-01-76
JFK	Ramp (Psgr)	7-01-75		
	Plant & Ground Equipment		1-01-76	
	A/C Maintenance			7-01-76
ANC	Ramp and Cargo		1-01-76	
	Plant & Ground Equipment			7-01-76
	A/C Maintenance			7-01-76
	Stores			7-01-76

exhibit 5.

IAM PROPOSALS
1-20-75

No.

3. The Company agrees that the positions and work within the scope of this Agreement belong to employees covered hereby and nothing in this Agreement shall be construed to permit the removal of positions or work from coverage of this Agreement or further to permit the Company to employ alien employees in such positions or work without written consent of the Union.

4. Effective January 20, 1975 and extending through the life of this Agreement, the Company shall not furlough any employee, covered by this Agreement.

5. The Company shall maintain lead coverage in all work classification during all work hours.

8. Radio and Electronic

The work of an R & E Mechanic shall consist of work generally recognized as R & E Mechanic's work performed in or out of the Company's shops, maintenance bases, and line service stations. Such work shall include reading of schematic diagrams both electrical and electronic, dismantling, assembling, repairing and overhauling all parts of aircraft radio equipments, electrical systems and components. An R & E must possess an FCC radio, telephone license, second-class, and such other licenses as may be required by Federal Regulations.

9. Storekeeper

The work of a storekeeper shall consist of storeroom work including receiving, shipping, checking, inspecting, classifying, issuing.

IAM PROPOSALS - Continued

No.

Storekeeper - Continued

inventoring, storing of supplies, equipment, all parts and materials, the operation of stores equipment, including the driving of equipment used in connection with his work, the preparation and maintenance of required records and reports, the transfer of parts and materials between locations at the base and other storeroom work such as making work schedules, fuel and oil reports, copy machine work, ordering and dispensing of office supplies, making up sales and service tickets, flight time records and all clerical work associated with purchasing office activities including business with Vendors.

11. All employees covered by this Agreement will have two (2) regularly scheduled days off each week which will be consecutive except where a rotated days off schedule provides other than consecutive days off in order to maintain the schedule of rotated days off.

12. Any change in starting time will call for a bulletin of all jobs affected.

19. Union withdraws this proposal.

20. Union withdraws this if Company withdraws its proposal #14. Pg 4

21. One additional holiday effective January 20, 1975, Lincoln's Birthday

23. Delete H 3.

24. Union will agree if the word "practicable" is replaced by the word "possible"

IAM PROPOSALS - Continued

No.

29. Clarify seniority language.

39. A There shall not be any close-out of vacation period during a vacation year.

47. Union withdraws this proposal.

49. A The Accredited International or District Lodge Representative shall be furnished with an annual pass to be used on Union Business on the Company system.

54. Union propose that the Company provide a non-contributory pension plan equal to the current UAL/IAM Pension Plan with credit for past service for all bargaining unit employees. All employees in the current pension plan shall have the option to continue their plan or withdraw all monies contributed by the Company toward their pension.

55. Company shall improve present medical plan benefits by increasing all schedule of benefits by 15 per cent, with no additional cost to employees.

56. Union will accept Company's proposal Pg. 44 if it includes coverage for spouse in item 2 orthodontic coverage.

57. Union withdraws this proposal if Company will increase medical benefits see No. 55.

58. Supervisors and higher ranking officials and other non-bargaining unit employees of the Company shall not be permitted to perform work on any hourly rated job covered by this Agreement except in

IAM PROPOSALS - Continued

No.

emergencies or instruction or training of employees. Technical Instructors shall not be permitted to perform hourly rated work except in connection with training and instruction and where the work performed is not maintenance, production or service work.

60. Effective January 20, 1975, the Company shall not hire any more part-time employees, and when part-time employees terminate or become full-time employees, they shall not be replaced.

61. Effective February 1, 1975, all part-time employees will be covered under the Company's group medical and dental plan on the same basis as full-time employees.

63. Effective November 1, 1973, the Company shall increase schedule A and B hourly rates in the 1972 - 1973 Agreement by 20% across the board to each classification and each increment.
Effective November 1, 1974, the Company shall increase the above hourly rate by 20% in the same manner.

65. Union withdraws this proposal.

66.

FAA	A license	.....	10¢/hr.
	P license	.....	10¢/hr.
FCC	2nd Class	.....	20¢/hr.
FCC	1st Class	.....	15¢/hr.
JCAB	DC-8	.....	15¢/hr.
	747	.....	15¢/hr.

IAM PROPOSALS - Continued

No.

68. The Company shall provide for a cost of living adjustment providing for a one cent (1¢) increase for each .3 change in the 1967 equals 100 Consumer Price Index.

69. All employees after one (1) year of service in a classification covered by this Agreement shall receive one cent (1¢) per hour per year of longevity pay to a maximum of twenty cents (20¢).

74. & 75.

Effective Date and Duration

Schedule "A" and Schedule "B" (Rate of Pay) shall be effective as indicated therein.

Retroactive adjustment of pay shall be made as follows:

(1) Within thirty (30) days after signing of this Agreement, the Company shall issue a separate check to each employee on the payroll covering retroactive adjustment for all hours paid since November 1, 1973, in accordance with Schedule "A" and "B" and computed on the basis of each employee's base rate.

(2) Retroactive pay shall also be issued to:

(a) All employees having an employee - employer relationship between November 1, 1973 and the date of signing of this Agreement.

(b) Those employees who have resigned and any discharged employees whose case is closed will be issued retroactive pay, provided they make an application in writing to the Company with a copy to the Union, within thirty (30) days after the signing of this Agreement.

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IAM PROPOSALS - Continued

No.

(c) Any retroactive pay due to a deceased employee shall be paid to his estate or to the personal representative of his estate.

All other changes, amendments and additions to this Agreement shall be made effective on the date of signing this Agreement, unless specifically stipulated otherwise.

The entire Agreement shall remain in full force and effect to and including October 31, 1975, and thereafter shall be subject to change as provided in Section 6, Title I of the Railway Labor Act, as amended

A134

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- X

JAPAN AIR LINES COMPANY, LTD. :

Plaintiff, :

-against- : 75 Civ. 166 (R.J.W.)

INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS AFL-CIO ("IAM"), et al., : AFFIDAVIT

Defendants. :

- X

STATE OF CALIFORNIA)
: ss.:
COUNTY OF SAN MATEO)

WAYNE KURAMOTO, being duly sworn, deposes and says:

1. As Assistant Manager, Employee Relations, for Japan Air Lines, I attended all the negotiation and mediation sessions over proposed changes in the Agreement between JAL and IAM, with the exception of sessions on January 15 and 16, 1975, when I was in New York to testify at the hearing on plaintiff's motion for a preliminary injunction. As part of my responsibility in these bargaining sessions, I kept careful notes of what transpired at each of the negotiation and mediation sessions. Immediately after each session, I had my handwritten notes typed and reviewed for accuracy by other

members of the JAL negotiating committee.

2. I have reviewed my notes, which constitute a complete set of the minutes of these contract negotiations, and I found that they support my testimony at the hearing on January 16, with the exception that Mr. Quick was not present until the First Mediation Session on January 15, 1974 -- it was Mr. Ogoshi who spoke on behalf of the Union at the earlier sessions; and the additional exception that the subject of pensions was discussed in detail during the third negotiating session on December 15 and 16, not during the second mediation session as I testified at the hearing.

3. My notes of the negotiation and mediation sessions support my recollection that many of the statements contained in the opposing affidavits of Fusao Ogoshi, Robert Quick and Sheldon Engelhard, apparently intended to create a prejudicial picture of plaintiff's behavior during the negotiations, are simply not true. For example, Mr. Kasumi did not walk out of negotiations on September 3, 1974 as is claimed by Mr. Ogoshi. Mr. Kasumi did leave the negotiations early on a single occasion, on August 26, when he stated that he was exhausted following a cross-country airplane trip immediately prior to the negotiations. In the post-mediation session held on January 19, 1975, Mr, Kasumi

did not state that he would not negotiate on Scope under any circumstances, regardless of the Court's ruling in the instant lawsuit, as related by Mr. Engelhard, but, rather, that he would not agree to the capital investment and change in operations necessary for JAL to do its own work at mainland stations, as requested by the Union, even if JAL were obligated to bargain over the issue.

4. Mr. Ogoshi's affidavit confirms my testimony, and the record in my notes, that scope was discussed at the start of each of the bargaining sessions. Although Mr. Ogoshi seeks to give the impression that scope was not discussed on many occasions, this is because most discussions of scope, as I testified, were brief and at the start of a session only.

5. My original handwritten notes taken at the First Mediation Session, beginning on June 25, 1974, show how Mr. Quick insisted on concessions in Scope, despite the Company's clear position that it would not bargain over the issue (copies of my original notes from the meetings of June 25 and June 29 are attached hereto as Exhibit 1, together with a typewritten verbatim transcript of the notes). Thus, on June 25, the Mediator stated that "Scope is a major drawback" and asked if JAL had any concessions in the area. Mr. Yonemura replied that "No, capital expenditures prohibit

[scope concessions]" and summed up by stating that the Company's position [on scope] has not changed since its response of January 18, 1974. On June 29, 1974 my notes show the following statement by Mr. Quick:

"Art. I Par. D - Scope - Is this Co. final decision Co. has no plans to do this.

Union in same position as 12/7 in NYC - No change - will have to go back to membership and recommend no acceptance - even if against IAM policy.

If no Co. movement, no alternative but to take vote (strike).

Union will discuss anything on table, but scope is major issue.

*Even if Co. drops all proposals, but not give Scope, Union will not have agreement.

* If Scope were not an issue, we would have agreement today."

This is in clear contrast to Mr. Quick's statement at p. 2 of his Affidavit that "at no time did I tell the plaintiffs' negotiating team that if the Scope issue were resolved, all other issues would fall into place."

6. My notes show that Mr. Quick said that the Union committee would not take back a package "unless there is some scope included" on July 30, 1974, at the very start of the Second Mediation Session, not on August 3, as Mr. Ogoshi states at page 12 of his affidavit. Significantly, Mr. Quick made that statement four days prior to the presentation of the letter regarding layoffs at Honolulu, which Mr. Ogoshi claims was the reason for Mr. Quick's statement.

7. The question of the Honolulu layoffs is another false issue injected into this case by defendants to distract the Court from the pertinent issues. JAL believed that it had the contractual right to furlough three mechanics and three ramp servicemen at Honolulu, according to the provisions of Appendix E of the Agreement, which allows furlough in certain circumstances. (See letter from Shigeo Kasumi to Fusao Ogoshi, dated August 16, 1974, a copy of which is annexed hereto as Exhibit 2.) This was clearly a dispute over the interpretation of existing contractual terms, as is evidenced most clearly by the grievances which were filed by the affected employees. Nonetheless, JAL cancelled the furlough letters on August 28 in order to continue negotiations in an attempt to reach agreement without distraction by an extraneous issue of contract interpretation before the lawsuit referred to in the affidavit of Mr. Quick and Mr. Ogoshi was even brought.

8. The opposing affidavits contain additional inaccuracies regarding the current post-mediation bargaining sessions in San Francisco. On January 17, five issues were tentatively settled, not two as stated by Mr. Quick (p. 4), and no Union proposals were withdrawn. The items tentatively agreed to on that date included such minor items as listing of all leaves of absences not included for overtime distribution purposes, retroactivity of sick leave and occupational injury leave increases, full medical and dental insurance for part-time employees, improvements in travel expenses, and clarification of the grievance procedure. On January 19, the IAM withdrew three proposals, not four as reported secondhand by Mr. Engelhard. The Union withdrew two proposals regarding the definition of an emergency under the Agreement, and a proposal for pass privileges for retired employees. Yesterday, January 20, the Union withdrew six items, including one conditional withdrawal, not seven. The proposals withdrawn include proposed increases in shift premium, line premium, lead pay differential, Company contribution for state temporary disability insurance and two proposals relating to employee option to take a ten-hour rest period. Clearly, none of these Union withdrawals or tentative agreements represent progress on the major issues in these negotiations; on the contrary, as pointed out in Mr. Kasumi's supplemental affidavit, the Union is simultaneously escalating its demands on

A 140

the major economic issues.

Wayne Kuramoto

Sworn to before me this
21st day of January, 1975.

Notary Public

A141

2nd Jan 74

JC/SAM Mediation, Sheraton Hotel
Commenced, 2:15 p.m.

Mediator — Arthur

Those Participating:
SFC — R. Stone, M. Paglia, G. McCandless
SC — Y. Kashima, H. Terao, G. Hosaka
Hotel — T. Suzuki, K. Shiraishi
F. Ogata, P. Quick

Mediator — asked if any changes since break
Yoshimura — explained that he had prepared some economic proposals, problem is cost due to high fuel etc.
Mediator — Stage is major drawback — there be some any concession that may make negotiations impossible.
Yosh — Co. Capital expenditures full basis
Ogata — At last nego. union asked for concessions & to date will have letter. Now comes down to basic position.
Have not made changes in any of elements since break known wage-up, wage-structure etc up

Kasuri — Co. position changed:
a. Financial position bad — $2(?) million deficit
b. Some facilities reached agreement — to will consolidate similarities as much as possible
Therefore, Co. position has not changed from ~~Dec~~ Nov. 18, 1973
Union — OT costs at certain stations are running 2-3 times this way
Co. wanted to cut OT and we

Union — Co. will not stand by stand of Jan. 2nd that ~~unless~~ the Union ~~not~~ ~~Jan~~ ~~2nd~~ put out & will ~~not~~ change the agreement today
Do not recommend a proposal ~~but~~ we must come up with ~~some~~ ~~proposal~~ before Co can get their three thousand

EXHIBIT 1

A142

25 Jun 74

JAL/IAM Mediations, SFO Hilton Hotel

Commenced 2:15 p.m.

Mediator - Willet:

Union Participants

JFK - R. Savino, M. Puglia, G. McLaughlin

SFO - Y. Karashima, H. Tarumi, G. G. Hiroshima

HNL - M. Suzuki, F. Shiraishi

F. Ogoshi, G. Quick

Mediator - asked if any changes since break. Yonemura - responded that Co. has proposed some answer to proposals. However, problem is cost due to high fuel costs.

Mediator - Scope is major drawback - does Co. have any concession that may make negotiations progress.

Yone - No. capital expenditures prohibit.

Ogoshi - At last nego. union asked for concession and Co. said will have later. Now come back with darker picture. Have not made useful study of settlements since break however vacation pay, wages-duration are imp.

Kasumi - Co. position changed:

a. Financial position bad - $(97) million deficit

b. Some airlines reach agreement - Co. will consider similarities as much as possible. Therefore, Co.

A143

position has not changed since response of Jan. 18, 1974.

Yone - OT costs at certain stations are running 2-3 times base wage.

Revenue increased but costs also went up.

Kasumi - Co. will modify stand of Jan. 18. But unless the Union not say "no" outright Co. will close the meetings today. If we recommend a proposal - we need union approval before Co. can get home Office approval.

A144

Commenced 11:00 a.m.

Cook – Stated proposals – disagreed – met ... proposal rejected + Co. proposals adopted.
Re pay. 8, OT rules (changing) – Union claims ... under rules.
Art. I par. D – Scope – It files Co. final ... & Co has no plans to do this.
Union in some positions as rel, to ... Co changes – will have to go back & negotiate – ... be acceptable – even if agreed may be –
If no Co. movement, no difference but to not – agree (Stokes)
Union will discuss displacement table but scope ... union issue.
Even if Co. drops all proposals, but not if ... Union will not have agreement.
If Scope can not be issue, we and how movement today.
Union wants Saturday

Adjourned by Co – Not Returned at first

June – Union in same pos. as ... no movement.
Subject to two negotiations already – we have ...

Co. comes back with: Par. Art. XVII Sec. 5 ... Par. C. – includes 2nd Tr (changes in Tr. & in present ...

In Grievances, Co. will employ to ... Union then meeting the Agreement.

Article. Overtime – proposed – but V, Pick. Co. employees not be required to work overtime against his wishes.

A145

29 Jun. 74

Commenced 11:00 a.m.

Quick - studies proposals - dissapointed - most union proposals rejected and Co. proposals included.

Re - pg. 8 OT rules (Emergency) - Union cannot accept because needed.

Art. I Par. D - Scope - Is this Co. final decision - Co. has no plans to do this.

Union in same position as 12/7 in NYC - No change - will have to go back to membership and recommend no acceptance - even if against IAM policy.

If no Co. movement, no alternative but to take vote (strike).

Union will discuss anything on table, but scope is major issue.

* Even if Co. drops all proposals, but not give Scope, Union will not have agreement.

* If Scope were not an issue, we would have agreement today.

Union wants security.

Caucus by Co. - 1200 Returned at 12:30

Yone - back in same position - no movement. Subject of two negotiations already -- we know Union position.

A-146

Co. wants to modify Art. XVII, Gen. & M's, Part time, Par. Q include 30% (change from 20% of present) present proposal excluding leads.

Ke. - Grievances, Co. will reply to 3rd step by letter rather than meeting this afternoon.

Quick: Counter-proposal - Art V, Par. L An employee will not be required to work overtime against his wishes.

A 147

AMERICAN EXPRESS TOWER, SUITE 1111
CENTER PLAZA, BUFFALO, N.Y. 14202
TELEPHONE: [illegible]
CABLE ADDRESS: JALNYC NEW YORK

MR. TUSAO OGOSHI
SR. BUSINESS REPRESENTATIVE
IAM & AW, DISTRICT LODGE 141
1600 S. BERETANIA STREET
HONOLULU, HAWAII 96814

DEAR MR. OGOSHI:

IN RESPONSE TO YOUR LETTER
WE STRONGLY BELIEVE OUR PROPOSED
LETTER OF AUGUST 2, IS IN
THE INTERNATIONAL AGREEMENT BY
YOU TAKE THE POSITION THAT
) ARTICLE E AND ARTICLE
AS WELL.

SINCE THE RESULT OF OUR
SIX FULL-TIME EMPLOYEES, ONLY IF THE
DO NOT ELECT TRANSFER TO SFO AND
THAT MAY BE IN VIOLATION OF ARTICLE
TO APPENDIX E. THAT LETTER
COMPANY FROM LAYING OFF EMPLOYEES
BY REVOCATION OF AN OPERATING CERTIFICATE
OF WORK BECAUSE OF CIRCUMSTANCES
CONTROL. THE FUEL SHORTAGE WHICH
AND THE GREATLY INCREASED COST OF
WHICH INFLATION, AND THE CANCELLATION
ROUTE ARE ALONG THE CIRCUMSTANCES
CONTROL WHICH HAVE RESULTED IN A
IN HONOLULU SINCE DECEMBER 1975.

AS I STATED TO YOU IN MY LETTER
SIX POSITIONS IN HONOLULU
OUT OF
TAKE ANY ACTION WHICH MIGHT
POSSIBLE, ALTHOUGH THAT ACTION
IS NOW SUSPENDED UNDER

WE BELIEVE, HOWEVER,
WITH
YOUR
HOW WE PROPOSE FOR CHANGES IN THE
LETTER.

VERY TRULY YOURS,

JAPAN AIR LINES COMPANY, LTD.

S. KASUNI
ADMINISTRATION MANAGER
THE AMERICAS

cc: M. TAKAHASHI

EXHIBIT 2

A148

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JAPAN AIR LINES COMPANY, LTD.,	:	
Plaintiff,	:	
-against-	:	75 Civ. 166(R.J.W.)
INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO ("IAM"): IAM DISTRICT LODGE NO. 151; FUSAO OGOSHI, individually and as Senior Business Representative of IAM District Lodge No. 151; ROBERT QUICK, individually and as Grand Lodge Representative of IAM; ROLLO SAVINO, GREGORY McLAUGHLIN, WILLIAM WHITBREAD, MAX SUZUKI, TATSUO SHIRAISHI, STANLEY NAGOAKA, YOSHIAKI KARASHIMA, GARY HIROSHIMA and HIROSHI TARUMI, individually and as representatives of a class consisting of all of plaintiff's employees represented by IAM and employed in the United States,	:	TEMPORARY RESTRAINING ORDER
Defendants.	:	

Upon the summons and verified complaint herein and upon the affidavits of Shigeo Kasumi, sworn to the 13th and 21st days of January, 1975, and of Wayne Kuramoto, sworn to the 21st day of January, 1975, and upon the hearing held on the 16th day of January, 1975, it appearing to the Court that a restraining order, preliminary to determination of the plaintiff's motion for a preliminary injunction, should issue because of the acts and threatened strike alleged by the verified complaint and affidavits above mentioned; that the acts will continue and

A 149

the threatened strike will occur unless restrained by order of this Court; and that the commission of such acts will cause immediate and irreparable injury, loss and damage to the plaintiff before a determination can be made on plaintiff's motion for a preliminary injunction, in that, as a result of the strike threatened by defendant's acts, plaintiff will be deprived of the use of a major part of its airline system and will be deprived of substantial revenues that would normally accrue from the passenger and cargo traffic carried on its airlines; that the travelling and shipping public will be greatly damaged and inconvenienced; that the plaintiff will suffer immediate and severe injury to its air carrier operations and to its reputation as a reliable and efficient carrier by air, in that the consequence of defendants' acts will likely be to require substantial cessation of the operations of plaintiff; that damage to plaintiff, resulting from such acts, cannot be wholly estimated, calculated or compensated in money, and that, because thereof, the damages which plaintiff will so sustain will be immediate, substantial and irreparable; that the threatened strike, if not enjoined, will prevent the plaintiff from performing functions important to the travelling public; and that plaintiff has given notice to the defendant association prior to the making of this application; and upon plaintiff's giving security, as fixed by the Court, in the sum of $50,000.00 which shall be given to the Clerk of the Court no later than January 23, 1975 at 5 PM conditioned as required by law, it is hereby

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ORDERED, that until the 31st day of January, 1975, at 5:00 o'clock p.m., unless this Order be dissolved prior thereto, or extended thereafter, the defendants and each of them, their members, officers, agents, servants and employees, and all persons acting in concert with them, be and hereby are restrained and enjoined

1) from directly or indirectly insisting or demanding that JAL bargain with the IAM over the IAM's proposed change in the "Scope of Agreement" clause in the Agreement between JAL and the IAM, or over any similar proposed change regarding JAL's right to determine whether to hire employees, establish facilities, or buy equipment to perform work at any location; and

2) from, in any manner or by any means, calling, causing, authorizing, inducing, instigating, encouraging, conducting or engaging in any strike, concerted refusal to report to work or accept regular duty assignments, or any other concerted work stoppage, work slowdown, or interference with plaintiff's normal operations, or picketing of, by, or among any of plaintiff's employees employed in the United States until such time as JAL and IAM have bargained over proposed changes

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in rates of pay, rules and working conditions in accordance with the requirements of the Railway Labor Act, and until the procedures of the Railway Labor Act have been fully exhausted, including, but not limited to, renewed negotiation between the parties, and mediation under the auspices of the National Mediation Board, free of any insistence that JAL bargain concerning the matters specified in the preceding paragraph; and it is further

ORDERED, that the defendant associations forthwith issue such notices and take such other steps as shall be necessary or appropriate to carry into effect the substance and intent of the immediately preceding Ordering paragraph hereof, including but not limited to the requirements that said defendants publicly withdraw and rescind any orders, directions, requests, suggestions, or threats to do any of the acts specified in the immediately preceding paragraph hereof.

Issued at 5:15 o'clock P .M., this 22nd day of January, 1975.

/s/ Robert J. Ward
United States District Judge

New York, New York

66270-A

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STOCK COMPANIES

ROYAL INDEMNITY COMPANY
A NEW YORK CORPORATION

GLOBE INDEMNITY COMPANY
A NEW YORK CORPORATION

NEWARK INSURANCE COMPANY
A NEW JERSEY CORPORATION
East Orange, New Jersey

ROYAL GLOBE INSURANCE COMPANY
AN ILLINOIS CORPORATION

AMERICAN AND FOREIGN INSURANCE COMPANY
A NEW YORK CORPORATION

THE LONDON & LANCASHIRE INSURANCE CO., LTD.
A CORPORATION OF GREAT BRITAIN

SAFEGUARD INSURANCE COMPANY
A CONNECTICUT CORPORATION
Hartford, Connecticut

Executive Office: 150 William Street, New York, New York 10038

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT

STATE OF NEW YORK
COUNTY OF NEW YORK

JAPAN AIR LINES CO. LTD.
Plaintiff

-against-

INTERNATIONAL ASSOCIATION OF MACHINISTS & AEROSPACE WORKERS, AFL-CIO. ETAL
Defendant

UNDERTAKING ON INJUNCTION

WHEREAS, the Plaintiff above named, is about to apply or has applied for an temporary restraining order & preliminary injunction pending final determination.

NOW, THEREFORE, the ROYAL GLOBE INSURANCE COMPANY, a corporation having an office and place of business at 150 William Street, New York, New York, does hereby, pursuant to the Statute in such case made and provided, undertake that the Plaintiff will pay to the said Defendant, INTERNATIONAL ASSOCIATION OF MACHINISTS & AEROSPACE WORKERS, AFL-CIO ETAL. so enjoined, such costs and damages not exceeding the sum of FIFTY THOUSAND AND 00/100- ($50,000.00)- - - - - - - - - - - - - - - dollars as it may sustain by reason of the injunction, if the Court shall finally decide that the Plaintiff is not entitled thereto; such costs and damages to be ascertained by a reference, or otherwise as the Court shall direct.

Dated this 23rd day of January, 19 75

ROYAL GLOBE INSURANCE COMPANY
Surety

Thomas J. From *Attorney-in-Fact*

BOND NO. 646609

CF66953A

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STATE OF NEW YORK }
COUNTY OF NEW YORK } ss:

On this 23rd day of January, 19 75, before me personally appeared Thomas J. Frem with whom I am personally acquainted, who, being by me duly sworn, said: that he resides in the 222 Beach 122nd Street, Belle Harbor, New York; that he is Attorney-in-Fact of the ROYAL GLOBE INSURANCE COMPANY the corporation described in and which executed the foregoing instrument; that he knows the corporate seal of the said Company; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order and authority of the Board of Directors of said Company; and that he signed his name thereto as Attorney-in-Fact by like authority; and that the liabilities of the said Company do not exceed its assets, as ascertained in the manner provided in Chapter 882 of the Laws of 1939, constituting Chapter 28 of the Consolidated Laws of the State of New York and known as the Insurance Law, and that pursuant to Sec. 327 of the Insurance Law the Superintendent of Insurance of the State of New York has issued to said Company a Certificate of Solvency and of Qualification to become surety or guarantor on all bonds, undertakings, recognizances, guaranties and other obligations required or permitted by law; and that such certificate has not been revoked.

(SEAL)

Court

County of

UNDERTAKING ON INJUNCTION

Surety

150 William Street, New York, N.Y. 10038

I approve of the within Undertaking and of the sufficiency of the surety therein.

Dated

NOTICE OF APPEAL

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT COURT

SAME TITLE

S I R S :

NOTICE is hereby given that International Association of Machinists and Aerospace Workers, AFL-CIO ("IAM"); IAM DISTRICT LODGE NO. 151; FUSAO OGOSHI, individually and as Senior Business Representative of IAM District Lodge No. 151; ROBERT QUICK, individually and as Grand Lodge Representative of IAM; ROLLO SAVINO, GREGORY McLAUGHLIN, WILLIAM WHITBREAD, MAX SUZUKI, TATSUO SHIRAISHI, STANLEY NAGAOKA, YOSHIAKI KARASHIMA, GARY HIROSHIMA and HIROSHI TARUMI, individually and as representatives of a class etc., defendants above named, hereby appeal to the United States Court of Appeals for the Second Circuit from the Order of Judge Robert J. Ward, United States District Judge for the Southern District of New York, granting plaintiff a temporary restraining order against the above-named defendants, entered in this action on the 22nd day of

January, 1975.

Dated: New York, New York
January 22, 1975

VLADECK, ELIAS, VLADECK & LEWIS, P.C.

By: /s/ SHELDON ENGELHARD
A member of the firm
Attorneys for Defendants
Office and P.O. Address:
1501 Broadway
New York, New York 10036
(212) 221-2550

TO: Poletti, Freidin, Prasker & Gartner
Attorneys for Plaintiff
777 Third Avenue
New York, New York

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- X

JAPAN AIR LINES COMPANY, LTD.,

Plaintiff,

-against-

INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO ("IAM"), et al.,

Defendants.

- X

75 Civ. 166 (RJW)

ORDER TO SHOW CAUSE

TO EXTEND TRO

Upon the affidavits of MURRAY GARTNER and SHIGEO KASUMI, both sworn to the 27th day of January, 1975, the summons and verified complaint herein, and all prior proceedings had herein, it is hereby

ORDERED, that the defendants and each of them appear before this Court on the 27th day of January, 1975 at 4:15 o'clock P.M. at Room 519 in the United States Courthouse, Foley Square, New York, N.Y., to show cause why the Court should not enter an order extending the temporary restraining order which was issued in this case by the Court on January 22, 1975, in the event that the Court determines that the said temporary restraining order will expire five (5) days from the date of its issuance under the provisions of the Norris-LaGuardia Act, 29 U.S.C. §§ 101 et seq., unless extended, or in the event this Court determines that additional time beyond January 31, 1975 is required for

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determination of plaintiff's motion herein for a preliminary injunction; and it is further

ORDERED, that personal service of this order and the papers upon which it is made on defendants or their attorneys or before 3 o'clock P. M. on the 27th day of January, 1975 shall be good and sufficient service.

S/ Robert J. Ward
U.S.D.J.

Dated: New York, New York
January 27, 1975
1:30 P.M.

January 27, 1975

Application granted in accordance with oral decision rendered on this date.

SO ORDERED

s/ Robert J. Ward
U.S.D.J.

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UNITED STATES DISTRICT COJRT
SOUTHERN DISTRICT OF NEW YORK

- X

JAPAN AIR LINES COMPANY, LTD., :

Plaintiff, : 75 Civ. 166 (RJW)

-against- :

AFFIDAVIT

INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO ("IAM"), et al., :

Defendants. :

- X

STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

MURRAY GARTNER, being duly sworn, deposes and says:

1. I am a member of the firm of Poletti Freidin Prashker Feldman & Gartner, attorneys for Japan Air Lines Company, Ltd. ("JAL"), plaintiff in the above-entitled action. I make this affidavit to show that good and sufficient reasons exist for bringing on plaintiff's motion for an extension of the temporary restraining order issued by the Court on January 22, 1975 by order to show cause rather than by ordinary notice of motion. No prior application for the relief sought herein has been made to any Court or judge.

2. On January 22, 1975, District Judge Robert J. Ward issued a temporary restraining order against the strike by defendants threatened to commence on January 23, 1975. The

restraining order was made effective until January 31, 1975. On January 24, 1975, plaintiff was served with an order to show cause returnable on January 28, 1975 in the United States Court of Appeals, bringing on a motion by defendants in the Court of Appeals to vacate the said temporary restraining order. One of the grounds relied on in defendants' motion to the Court of Appeals is that the restraining order should not have been issued for longer than five (5) days and cannot be valid for a longer period under the provisions of the Norris-LaGuardia Act, 29 U.S.C. §§ 101 et seq. Defendants did not make a formal motion to that effect, supported by legal authorities in this Court, as invited by this Court to do at the time the restraining order was issued.

3. Plaintiff makes the within motion to extend the temporary restraining order issued on January 22, 1975 so that this Court may give timely consideration to defendants' argument that the restraining order expires after five (5) days, and so that, if necessary, the Court may extend the restraining order beyond that five-day period before the order expires. Defendants' papers filed in the Court of Appeals and plaintiff's answering affidavit and memorandum of law filed in that Court are herewith furnished to this Court.

4. It appears from plaintiff's memorandum that § 7 of the Norris-LaGuardia Act does not apply, nor does it limit

to five (5) days the duration of a temporary restraining order. But, if defendants are correct in their argument as to the duration of the temporary restraining order, it will expire at 5:15 P.M., January 27, 1975. Clearly it is impossible to give the defendants the ten (10) days' notice of motion required by Rule 9(c)(2) of the General Rules of this Court if the hearing on plaintiff's motion is to be held prior to the time when defendants argue that the temporary restraining order expires.

4. It is respectfully submitted that the Court should, therefore, shorten the period of notice required to bring on the motion to extend the temporary restraining order herein by issuing an order to show cause returnable at 1:00 o'clock P.M. on January 27, 1975.

s/ Murray Gartner
MURRAY GARTNER

Sworn to before me this
27th day of January, 1975.

Notary Public

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- x

JAPAN AIR LINES COMPANY, LTD., :

Plaintiff, :

-against- : 75 Civ. 166 (R.J.W.)

INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO ("IAM"), et al., : AFFIDAVIT

Defendants. :

- x

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

SHIGEO KASUMI, being duly sworn, deposes and says:

1. Deponent and Purpose. This affidavit is submitted in support of plaintiff's application for an extension of the temporary restraining order issued by this Court in the above matter on January 22, 1975. I have been the chief negotiator for the plaintiff in the negotiations with the IAM for changes in the current agreement between that Union and Japan Air Lines which began in November 1973 and I have been in San Francisco, California continuously from January 14, 1975 to January 24, 1975 for the purpose of continuing to negotiate with the IAM in the most recent sessions called by the National Mediation Board in the

public interest to begin on January 14, 1975.

2. Negotiations since January 22 Order: Morning of January 23.

(a) Preliminaries. In my previous two affidavits filed herein, I have related to the court the course of negotiations between the IAM and JAL to January 21, 1975. Following the issuance by this Court of a temporary restraining order herein on January 22, 1975, at a meeting among the Company representatives and the Union representatives and Mediator Walter Phipps, on January 23, 1975, we distributed to the Union committee a complete response to the Union proposals. In that response, the Company made further concessions on Union proposals #5. 23. and 49A and withdrew Company proposal #14.

(b) References to Court Order. After some discussion, Mr. Quick asked if the Company wanted to discuss the temporary restraining order. I said that the Company didn't want to discuss the order, we wanted only to make a peaceful settlement. Mr. Quick asked what the Company's interpretation of the temporary restraining order was. I answered that that was a legal matter which the Union's attorney should discuss with the Company's attorney. Mr. Kuramato said that the Company's purpose in these meetings was to make an agreement and not to discuss court matters. Mr. Quick said that they wanted to make an agreement too. He then turned to the Mediator and said that the Union

wanted to know what the Company's interpretation of the temporary restraining order was so that they would know how the Company will be proceeding. He added that the judge says we can't discuss scope, emphasizing that he was directing his remarks to the Mediator and not to the Company. Mr. Quick said "We are going to discuss scope". He said that he was talking to the Mediator so that Mr. Kuramato could not go to New York and say that Mr. Quick discussed scope. Mr. Quick then brought out a bottle of Scope and put it on the table. Mr. Quick then referred to a newspaper article about a recent railway settlement in which the employees received approximately 31% over a 36 month contract. Mr. Kuwano said that JAL had received its initial capital from the Japanese government but does not receive any subsidy. He stated that he thought that the government would treat JAL the same way that the United States government treated Pan Am.

(c) Union Proposal. After a recess, the Union returned and distributed a written proposal, a copy of which is annexed hereto as Exhibit 6. (Numbered in sequence with exhibits to my prior affidavits) In addition to proposing wage increases of 15% for each of two years, and an unlimited cost of living escalator clause, the Union proposed abolition of our present contributory pension plan and immediate adoption of the United Air Lines non-contributory plan. The entire proposal was conditioned on the Company's agreement that it would accept every-

thing in it without change, and, in addition, agree to negotiate later on the Union's "scope" demand if this Court's decision was that the Union had a right to insist upon its "scope" demand. In other words, we were asked to agree to an extraordinary economic package, leaving open the possibility that the Union might later, as soon as the court decision was made, insist upon our hiring 235 new employees, presumably with the right to strike if we did not at that time agree to such new hiring. I said that the Company wanted to study the Union's written proposal and suggested that we meet again at 4:00 P.M. The meeting recessed with that understanding.

3. Afternoon of January 23. When we reconvened at 4:00 P.M., the Mediator asked the Union's response to the Company's proposals on specific items which had been made at the morning session. Essentially, Mr. Ogoshi stated that the Union accepted the Company's proposals on those items. Mr. Kuramoto then said that the Company had studied the Union's six-item written proposal and responded in writing to each item by offering an additional 3¢ per hour increase to the Company's last wage offer, the previous Cost of Living clause, and a reduction in the duration of the contract from 30 months to 26 months. The Company also offered a letter to the effect that it would agree in principle to move from its present pension plan to the United Air Lines plan after the exchange of specific proposals and

negotiations for the next contract whose term would begin in January, 1976. The Union proposals of January 23, 1975 numbered 3, 4 and 5 were rejected. (A copy of the Company's response is attached hereto as Exhibit 7) At the Union's request, the meeting recessed at 4:20 P.M.

4. Union Obtains Order to Show Cause in New York. As we learned afterwards, apparently about two hours later, in New York, the Union obtained an order to show cause from Circuit Judge Mulligan, bringing on motion to vacate the temporary restraining order issued by this Court, to be heard by the Court of Appeals at 10:30 A.M., January 28, 1975.

5. Morning of January 24, 1975. When we met again on January 24, 1975 from 10:30 A.M. to 11:50 A.M., almost the first thing that Mr. Quick said was that the Union was abandoning its proposal made on January 23, 1975 (Exhibit 6 hereto) and returning to the status on Wednesday, January 22, 1975, when he had listed some nineteen open items, including a demand for wage increases of 20% for each of two years. There was considerable diffuse discussion about many points, but no effort on the Union's part to narrow differences on existing positions of the Company and the Union. The meeting adjourned with agreement to resume at 2:30 P.M.

6. Afternoon of January 24, 1975. At 2:30 P.M. on January 24, 1975, the parties convened again with the Mediator, but the Union representatives would not enter into any discussion

except about their demand for an additional holiday. The Mediator then suggested that the meetings be broken off and resumed on January 29, 1975. We responded that we wanted to continue to try to reach agreement. After the Union representatives had caucused, they returned to say that they accepted the Mediator's suggestion. We had no alternative, and after we agreed to continue the same air fare privileges as before for the committee so they could return home, the meeting adjourned until January 29, 1975. I need not emphasize that January 29, 1975 is the day after the Union's motion to vacate the temporary restraining order is to be heard in the Court of Appeals.

7. Because of the shortness of time, my statement of the course of negotiations on January 23 and 24, 1975 is not offered as complete, but it is I believe an accurate summary of the most important events.

s/ Shigeo Kasumi
Shigeo Kasumi

Sworn to before me this
27th day of January, 1975

Notary Public

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Y.A.M. PROPOSAL TO I.A.L. 1-23-75-

WAGES- 15¢ ACROSS THE BOARD EACH YEAR FOR TWO YEARS EFFECTIVE 11-1-73-

A- UNLIMITED C.O.L. STARTING 1-1-75-

RETIREMENT PLAN - UNITED PLAN WITH ~~PRESENT~~ PARTICIPANTS OF PRESENT PLAN TO GET FULL REFUND-

PROVISION WITH GUARANTEE OF NO LAY-OFF OF ANY EMPLOYEE DURING LIFE OF AGREEMENT- -PERIOD-

NEGOTIATE ON SCOPE RULE IF FINAL COURT DECISION PERMITS.

COMPANY TO WITHDRAW ITS #9 AND ALL OTHER COMPANY PROPOSALS - ALL OTHER UNION PROPOSALS TO BE WITHDRAWN IF AND ONLY IF COMPANY WILL AGREE TO #1 + 1 A + 2 + 3 + 4 + 5 #1 STEP ABOVE WITHOUT CHANGE

A168.

RESPONSE TO IAM PROPOSALS
1-23-75

1. Increase Schedules A & B by 3¢ per hour across the board.

   No change on C.O.L. as submitted on 9-02-74.

   Effective Date and Duration - A twenty-six (26) months

   Agreement effective 11-01-73 through 12-31-75.

2. Regarding retirement plan, see Appendix B, issued 1-23-75.

3. Regarding Appendix D, issued 11-12-74, no change.

4. Appendix E, Substitute Positions - no change.

5. Company withdraws its proposal #28.

Exhibit

VERIFIED ANSWER

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

SAME TITLE

Defendants, by their attorney, Vladeck, Elias, Vladeck & Lewis, P.C., for their answer to the complaint, allege:

FIRST: They are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph numbered "2" of the complaint except admit that plaintiff has offices and places of business at 655 Fifth Avenue, New York City and at John F. Kennedy International Airport.

SECOND: They are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph numbered "3" of the complaint except admit that plaintiff has flights into and out of five United States cities.

THIRD: They are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs numbered "4", "27" and "28"

of the complaint.

FOURTH: They are without knowledge or information sufficient to form a belief as to the truth of so much of the allegations contained in paragraph numbered "5" of the complaint as alleges that plaintiff employs about 20,000 persons in its world-wide airline operation, including some 1,400 persons in the United States.

FIFTH: They deny so much of the allegations contained in paragraph numbered "8" of the complaint as might be deemed to allege that defendant WILLIAM WHITBREAD was a member of the defendants' negotiating committee prior to January, 1975.

SIXTH: They deny the allegations contained in paragraph numbered "9" of the complaint except admit the individual defendants named are interested in this action, that plaintiff has sued them individually and has attempted to form such individual defendants as representatives of a class.

SEVENTH: They deny the allegations contained in paragraph numbered "15" of the complaint except admit that all of defendants' proposals contained in its Section 6 Notice related to rates of pay, rules and working conditions, including "Scope," and the proposal with

respect to "Scope" was as set forth in said paragraph of the complaint.

EIGHTH: They deny the allegations contained in paragraph numbered "16" of the complaint except admit representatives of the parties met in conference sessions to negotiate concerning a new agreement and that they have failed to reach any such agreement.

NINTH: They deny the allegations contained in paragraph numbered "18" of the complaint except admit that "Scope" continued to be only one of the bargaining proposals the defendants negotiated on, and that no agreement was reached.

TENTH: They deny all the allegations contained in paragraph numbered "20" of the complaint except admit plaintiff's willingness to arbitrate issues involving rates of pay, rules or working conditions but excluded therefrom arbitration on "Scope".

ELEVENTH: They deny all the allegations contained in paragraph numbered "23" of the complaint except admit that "Scope" is still one of the many open issues between the parties to be resolved before agreement can be reached.

TWELFTH: They deny all the allegations contained in paragraphs numbered "24", "25", "26", "29", "31", "32", "33", "34", "35", "37" and "38" of the complaint.

THIRTEENTH: They deny all the allegations contained in paragraph numbered "30" of the complaint except allege that they have not reached any conclusion as to whether to strike on January 23, 1975 when the cooling-off period expires.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

FOURTEENTH: Plaintiff fails to state a claim upon which relief can be granted.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

FIFTEENTH: Section 108 of the Norris-La Guardia Act (29 U.S.C. 101 et seq.) provides as follows:

> "Noncompliance with obligations involved in labor disputes or failure to settle by negotiation or arbitration as preventing injunctive relief.
>
> "No restraining order or injunctive relief shall be granted to any complainant who has failed to comply with any obligation imposed by law which is involved in the labor dispute in question, or who has failed to make every reasonable effort to settle such dispute either by negotiation or with the aid of any available governmental machinery of mediation or voluntary arbitration."

SIXTEENTH: Section 152, FIRST, of the Railway Labor Act, 45 U.S.C. 151 et seq., provides as follows:

> "It shall be the duty of all carriers, their officers, agents, and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise, in order to avoid any

interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof."

SEVENTEENTH: Plaintiff and those of its employees negotiating on its behalf with the defendants and participating in the mediation sessions conducted by the National Mediation Board have failed and refused to make reasonable efforts to make a new agreement concerning rates of pay, rules and working conditions but on the contrary have refused to negotiate with defendants on proposed changes in provisions of the agreement which were set forth in defendants' RLA Section 6 Notice.

EIGHTEENTH: Plaintiff's obligation to negotiate with defendants as aforesaid is in violation of and contrary to the mandate of the Railway Labor Act.

NINETEENTH: By reason of the premises plaintiff is not entitled to any injunctive relief.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

TWENTIETH: Plaintiff has failed and refused to negotiate with defendants in good faith in that on the alleged pretext that a certain proposal of defendants, which has been the source of collective bargaining between the parties on all prior contractual negotiations and forms a part of all prior labor agreements, is not

a proper subject of bargaining but, in effect, falls into the category of a management non-bargainable right.

TWENTY-FIRST: That on the contrary, the subject matter of said proposal had been negotiated between the parties in all prior negotiations and had formed part of prior collective bargaining agreements including the last one between the parties.

TWENTY-SECOND: That although negotiations between the parties commenced on or about November 6, 1973 it was not until on or about November 13, 1974, more than a year later, that Plaintiff refused to negotiate with defendants in connection therewith and in plaintiff's acceptance of arbitration proposed by the National Mediation Board expressly exclude the same as a subject for arbitration.

TWENTY-THIRD: That by reason of the premises plaintiff has neither negotiated, bargained or acted in good faith, fails to come into this Court with "clean hands", and is entitled to no injunctive or other equitable relief.

WHEREFORE, defendants pray for judgment dismissing the complaint together with the costs and disbursements of this action.

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VLADECK, ELIAS, VLADECK & LEWIS, P.C.

By: /s/ Sylvan H. Elias
A Member of the Firm
Attorneys for Defendants
Office and P.O. Address:
1501 Broadway
New York, New York 10036
(212) 221-2550

VERIFICATION

STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

ROBERT T. QUICK, being duly sworn, deposes and says:

Deponent is one of the Defendants in the within action; Deponent has read the foregoing Verified Answer and knows the contents thereof; the same is true to deponent's own knowledge, except as to the matters therein alleged upon information and belief, and those matters deponent believes to be true.

Sworn to before me this
29th day of January, 1975. /s/ Robert T. Quick

/s/ Robert L. Jauvtis
Robert L. Jauvtis, Esq.
Notary Public, State of New York
No. 41-4522628
Qualified in Queens County
Commission Expires March 30, 1976

A176

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

JAPAN AIR LINES COMPANY, LTD., :

Plaintiff, :

-against- :

INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO ("IAM"), et al., :

Defendants. :

----------x

75 Civ. 166 (R.J.W.)

AFFIDAVIT IN SUPPORT OF APPLICATION FOR EXTENSION OF TEMPORARY RESTRAINING ORDER

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

MURRAY GARTNER, being duly sworn, deposes and says:

1. I am a member of the firm of Poletti Freidin Prashker Feldman & Gartner, attorneys for JAPAN AIR LINES COMPANY, LTD. ("JAL"), plaintiff in the above-entitled action. I make this affidavit in support of plaintiff's application to extend the temporary restraining order herein issued by the Court on January 22, 1975, and filed in the Office of the Clerk of the United States District Court for the Southern District of New York on January 24, 1975.

2. The temporary restraining order issued by the Court on January 22, 1975 expires according to its terms on January 31, 1975 at 5:00 o'clock P.M. Unless the temporary restraining order is extended beyond that time, while this Court

continues consideration of plaintiff's motion for a preliminary injunction, defendants will be free to strike against plaintiff following expiration of the temporary restraining order.

3. I have been informed by Mr. Kuramoto, spokesman for JAL at the negotiations with the IAM which resumed in San Francisco on January 29, 1975 following the events related in the affidavit of Mr. Shigeo Kasumi, sworn to on January 27, 1975 and filed herein, that as of the close of the negotiation sessions on January 30, 1975, no agreement between the parties had been reached, and that Mediator Walter Phipps has not scheduled a joint meeting between the parties for January 31, 1975. Unless the temporary restraining order is extended, therefore, the IAM is likely to begin a strike against plaintiff as soon as the temporary restraining order expires.

Murray Gartner
MURRAY GARTNER

Sworn to before me this
31st day of January, 1975

Edward A. Brill
Notary Public

EDWARD A. BRILE
Notary Public, State of New York
No. 4503338
Qualified in New York County
Commission Expires March 30, 1975

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JAPAN AIR LINES COMPANY, LTD., Plaintiff,	:	
-against-	:	75 Civ. 166 (R.J.W.)
INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO ("IAM"), et al., Defendants.	:	ORDER EXTENDING TEMPORARY RESTRAINING ORDER

This cause having been heard on January 16, 1975, on plaintiff's motion for a preliminary injunction, and at defendants' request, the Court having granted defendants leave to file affidavits on January 20, 1975, with leave to plaintiff to file answering affidavits on January 21, and such affidavits having been filed, together with memoranda of law, and the Court having, on plaintiff's application, issued a temporary restraining order on January 22, 1975 effective until 5:00 P.M. January [illegible] in accordance with its decision on said application on that date; and the Court having been continuously engaged from January 20, 1975 to January 29, 1975 in the conduct of a criminal trial, and defendants having requested an opportunity to offer oral testimony of witnesses if the Court after study of the record thus far considers such testimony to be necessary; and it appearing to the Court from the affidavit of Murray Gartner sworn to the 31st day of January that defendants, unless restrained by this

Court, will commit the acts referred to in the said temporary restraining order issued by this Court on January 22, 1975, and entered in the Office of the Clerk of the United States District Court, Southern District of New York on January 24, 1975, and it further appearing that the immediate and irreparable injury, loss and damage specified in said restraining order will result to plaintiff unless defendants continue to be restrained pending the determination of the plaintiff's motion for preliminary injunction; and it further appearing to the Court that additional time is required for the consideration and determination of plaintiff's motion for preliminary injunction; pursuant to Rule 65(b) of the Federal Rules of Civil Procedure, it is hereby

ORDERED, that the temporary restraining order issued herein on January 22, 1975 and filed in the Office of the Clerk of the United States District Court, Southern District of New York, on January 24, 1975, be and it hereby is extended to the day of February, 1975 at : M., E.S.T.

United States District Judge

Issued at : o'clock .M., this 31st day of January, 1975.

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

JAPAN AIR LINES COMPANY, LTD.,

Plaintiff,

-against-

OPINION

INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO ("IAM"); IAM DISTRICT LODGE NO. 151; FUSAO OGOSHI, individually and as Senior Business Representative of IAM District Lodge No. 151; ROBERT QUICK, individually and as Grand Lodge Representative of IAM; ROLLO SAVINO, GREGORY McLAUGHLIN, WILLIAM WHITBREAD, MAX SUZUKI, TATSUO SHIRAISHI, STANLEY NAGOAKA, YOSHIAKI KARASHIMA, GARY HIROSHIMA and HIROSHI TARUMI, individually and as representatives of a class consisting of all of plaintiff's employees represented by IAM and employed in the United States,

75 Civ. 166

Defendants.

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A P P E A R A N C E S

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WARD, D. J.

Plaintiff, Japan Air Lines Company, Ltd. ("JAL"), a carrier engaged in the operation of an airline system for the carriage by air of passengers, property and mail in overseas and foreign commerce, and subject to the provisions of the Railway Labor Act ("RLA"), 45 U.S.C. §§151-52, 154-63, 181-88, commenced this action against defendant International Association of Machinists and Aerospace Workers, AFL-CIO ("IAM"), the collective bargaining representative of certain of its employees in the United States. In addition to IAM, the complaint names as defendants IAM District Lodge No. 151 ("District 151") which has jurisdiction over the members of the IAM employed by JAL in the United States and certain individuals who represented JAL employees in negotiations over proposed changes in the existing labor agreement between JAL and IAM. The individual defendants who are employed by JAL are also sued as representatives of a class consisting of all employees of JAL represented by IAM.

The complaint charges that throughout negotiation and mediation of proposed changes in the aforementioned labor agreement IAM has insisted on an unlawful change in the "Scope" clause of the agreement as a condition of reaching a new agreement. It is alleged that the IAM proposal that JAL hire its own employees to perform work which has never been performed by JAL employees, but which has heretofore been contracted

out, is directed towards expansion of the IAM's own membership and its control of work, not its representation of employees and that the proposal is not related to the rates of pay, rules or working conditions of JAL's present employees within the meaning of RLA §§2, First, 6, 45 U.S.C. §§152, First, 156.

It is further alleged that the IAM, by its proposed change in the "Scope" clause of the agreement, seeks to bargain with JAL over fundamental management decisions unrelated to rates of pay, rules or working conditions of JAL's present employees and that JAL has no obligation under the RLA to bargain with the IAM over this proposed change. JAL seeks to enjoin a strike by defendants on the ground that a strike would be unlawful under the RLA because (1) defendants have not fulfilled their statutory obligation to make every reasonable effo t to reach an agreement and (2) an object of such strike would be to force acceptance by JAL of the IAM's allegedly unlawful demand.

The defendants, by their answer, deny that they have violated §2, First of the RLA. They allege that the "Scope" changes proposed by the IAM's §6 Notice are bargainable and that JAL has violated its §2, First duty in refusing to negotiate with the defendants over these proposals. They further allege that although changes of the sort contemplated

by the IAM's §6 Notice were the subject of prior negotiations between the parties and formed part of the last collective bargaining agreement and negotiations for a new collective bargaining agreement commenced November 6, 1973, plaintiff did not maintain that the "Scope" proposal was a non-bargainable management right until November 13, 1974. They, therefore, allege that plaintiff is not entitled to equitable relief because it does not come into this Court with "clean hands."

This action was commenced after negotiations which had been conducted intermittently over a fourteen-month period failed to achieve an agreement. Plaintiff applied for a temporary restraining order which, after an evidentiary hearing on notice to defendants and their attorneys, was granted on January 22, 1975, one day before the expiration of the 30-day "cooling-off" period provided by RLA §5, First, 45 U.S.C. §155, First.

The written agreement between the parties covering JAL's United States employees in the craft or class of airline mechanics, including ground service and ramp employees, became effective March 1, 1972, was to continue in effect until October 31, 1973 and thereafter was subject to change as provided by RLA §6, 45 U.S.C. §156. On or about September 28, 1973, pursuant to Article XXII of the agreement and RLA §6,

IAM served JAL with notice of approximately 75 proposed changes in the agreement. By letter dated October 1, 1973, JAL served notice of approximately 40 changes which it proposed.

Negotiations began on or about November 6, 1973 in Honolulu at which time defendant Fusao Ogoshi, on behalf of IAM, read and explained all of the union's section 6 proposals, including four proposed changes in Article I.[1] The dispute in this Court focuses on the IAM's proposed change in Article I, Paragraph D, of the existing agreement ("the Scope proposal" or "Scope").

To understand the dispute, it is necessary to know something about the JAL operation in the United States. In connection with flights to Honolulu, New York, San Francisco, Los Angeles and Anchorage JAL requires services in the following classifications: "Maintenance," "Plant Maintenance," "Ramp Service" and "Stores." JAL employees who are part of the bargaining unit represented by the IAM perform these services except that since the inception of its routes to the latter four cities, JAL has subcontracted its "Maintenance" requirements at all four cities, its "Plant Maintenance" requirements at San Francisco, Los Angeles and Anchorage, its "Ramp Service" requirements at Los Angeles and Anchorage, and its "Stores" requirements at Anchorage.

In 1972 the IAM, in its §6 Notice to JAL, proposed modifications of Article I of the existing collective bargaining

agreement, specifically, to provide that JAL employ at all locations in the United States its own personnel in the aforementioned classifications. Citing economic considerations, JAL declined to modify Article I. The National Mediation Board ("NMB") accepted jurisdiction of the dispute and appointed a mediator. Accepting a suggestion by the mediator, the parties agreed to the adoption of Appendices "D" and "E", letter agreements which became a part of the collective bargaining agreement.[2] As a result of the implementation of Appendix "D", the "maintenance work" performed on equipment in the Cargo Warehouse in New York which had been subcontracted to Mohawk Air Service is now being performed by JAL employees who are part of the IAM's bargaining unit.

Although American counsel had been consulted in 1972, and had allegedly rendered an opinion relating to JAL's legal obligation to bargain on "Scope", this opinion was never communicated to the IAM.

On November 6, 1973, as negotiations opened, the IAM proposed that during the life of the new agreement, JAL phase out the subcontracting of work in the aforementioned classifications at New York, San Francisco, Los Angeles and Anchorage, and employ its own personnel, represented by the IAM, to perform such services.

The parties met again on November 7, 1973 at which time Mas Yonemura, an attorney representing JAL, read and explained the company's Section 6 proposals, none of which concerned "Scope" except insofar as JAL proposed eliminating the no furlough provision contained in Appendix "E" of the existing agreement. The parties continued meeting on November 8, 1973 but discussed only outstanding grievances.

These grievances were again discussed when the parties next met in San Francisco on November 26, 1973. The following day, November 27, the parties discussed proposed changes in the agreement including not more than ten minutes devoted to the union's "Scope" proposal.

The testimony is in conflict as to whether JAL made any response to the latter proposal. Defendants' witnesses testified that JAL made no response.

The evidence, viewed in the light most favorable to plaintiff, indicates that JAL's response was that it wished to make no change in the "Scope" article. Although the negotiations continued on November 28, "Scope" was not discussed.

The meetings were recessed until December 15, 1973, at which time the parties resumed negotiations in San Francisco. In the course of meetings which took place on December 16 and 17, the IAM "Scope" proposal was again raised. According to

plaintiff's witnesses, JAL's spokesman, Mr. Yonemura, replied that there was no change in the company's position with regard to this issue. Mr. Yonemura stated that JAL currently planned construction of a new cargo facility at San Francisco, where it planned to house its own plant mechanics but that JAL had no other plans to open new facilities due to uncertainty of future flight schedules, the fuel crisis, and a mounting operating deficit. The IAM requested information regarding the number of man hours included in the services rendered by Mercury Air Service and United Airlines, contractors performing services for JAL at Los Angeles and San Francisco. The company refused to divulge this information, stating it was confidential, a position which it again took at the hearing on its motion for a preliminary injunction. The IAM explained that it was concerned with the possibility of lay-offs of JAL employees as a result of the fuel crisis and that it considered it unfair for union employees to be laid off while similar work was being performed by subcontractors. So far as the testimony reveals, this was the extent of the discussions concerning the "Scope" proposal. According to Wayne Kuramoto, a witness called by plaintiff, at most 15 or 20 minutes was devoted to this subject.

The final direct negotiations took place in Honolulu between January 15 and January 19, 1974. In the course of these sessions, "Scope" was again raised by the IAM and JAL once more indicated that its position with regard to this subject had

not changed. According to the defendant Ogoshi, JAL's representatives never stated that the company could not or would not bargain on "Scope".[3] On the contrary, according to Mr. Ogoshi, the company gave reasons for not wanting to accept the union's "Scope" proposal, specifically, that it needed flexibility in relation to use of its manpower. In all, not more than 20 minutes were devoted to discussion of this subject. The remainder of the negotiations were devoted to other subjects. At the conclusion of this round of negotiations, the parties determined that they were deadlocked.

The Court finds as a fact that during each round of the direct negotiations the IAM raised the question of "Scope" and asked JAL to bargain on its "Scope" proposal. The Court further finds that JAL consistently refused to bargain on this issue at least to the extent that it insisted there should be no change in the existing agreement and that it refused to make any offer or counter-proposal with regard to this subject.

On January 25, 1974, JAL applied to the NMB, pursuant to 45 U.S.C. §155, invoking the mediation service of the NMB with respect to the dispute over the proposed changes in the agreement. The NMB accepted jurisdiction of the dispute, docketed it as Case No. A-9520, and appointed a mediator.

The initial mediation session was scheduled to be held between June 25 and 29, 1974. On the first day, each side

explained its proposals and "Scope" was discussed for 10-15 minutes. JAL was asked if it had any offer on "Scope" and indicated that because of its "economic situation" it did not. After the first day, the mediator became ill and the parties concluded the initial round of negotiations without the mediator, discussing all open items.

The second mediation session began on July 20, and concluded on August 3, 1974 with a new mediator in attendance. Two days of this session were spent in discussions concerning a pension proposal; however, no agreement was reached on this item. Work rules and overtime were also discussed.

On August 2, 1974, JAL gave the IAM a list of employees who were to be furloughed as the result of the fuel crisis. The next day, defendant Quick, speaking for the IAM, told JAL that the union had to have some change on "Scope". He explained that there was great concern with lay-offs and that the union bargaining committee could not recommend ratification of the proposed contract without something from the company on "Scope". JAL indicated that it had not changed its position and declined to offer anything on "Scope".

Negotiations resumed on August 26 and continued through September 3, 1974. All open items were discussed with JAL making substantial concessions on wages and indicating it was willing to offer the IAM just about what the union had settled for with United Airlines. However, the term of the

proposed agreement differed from the term of the United Airlines agreement. JAL asked the IAM to take the proposed contract back to the membership for a ratification vote. Mr. Quick, on behalf of the IAM, agreed but indicated that the bargaining committee could not recommend ratification unless JAL made some offer on "Scope" and that the membership was likely to vote the contract down absent some concession on "Scope". Within the next week the membership voted on JAL's contract offer. On September 10, 1974, the IAM notified JAL that the company's offer had been rejected by 97.2% of the membership.

The final mediation session under the auspices of the NMB was held on November 12 and 13, 1974.

On November 12, Mr. Quick again stated that the union had to have something on "Scope" to satisfy its members. According to Mr. Quick, the company responded by offering to put plant maintenance mechanics in San Francisco and plant maintenance and automotive mechanics in New York when JAL could lease appropriate space at both locations but that due to the financial condition of the company and the cost involved the company could not agree to anything further on the "Scope" proposal. The IAM rejected this offer deeming it already included in Appendix "D" of the existing agreement

The following day, Shigeo Kasumi, JAL's Administrative Manager, the Americas, requested that "Scope" be put off until

all other issues were considered. The IAM insisted that all open items were to be discussed, including "Scope".

Mr. Kasumi then said "Scope" was not a negotiable issue. Mr. Quick replied that it had always been a negotiable matter and that nothing in the law made it non-negotiable. At that point, the company representatives left the meeting.

On or about November 26, 1974, Kiichi Ito, JAL's Vice President, the Americas, in a letter addressed "To All IAM-Represented Employees", stated that "the Company has told the Union Committee that we will not bargain on 'Scope' or other issues not related to rates of pay or working conditions for our own employees."

On December 17, 1974, the NMB requested that the parties submit the dispute over proposed changes in their agreement to arbitration. JAL agreed to arbitrate all issues except "Scope". However, the IAM rejected the NMB's proffer of arbitration. Thereupon, the NMB served notice that its services were terminated December 23, 1974 and the IAM could thus strike on and after January 23, 1975. Despite this fact, the parties met voluntarily on January 15, 1975 with a mediator and discussed all open issues.

As noted above, on January 22, 1975, after hearing the parties, this Court issued a temporary restraining order prohibiting a strike and also prohibiting the parties from bargaining on "Scope". The restraining order was originally to expire on January 31 and was extended pending further hearings

until February 10. Inasmuch as the hearings did not conclude until February 7 and the parties indicated that they could not file their proposed findings and conclusions before February 12, the Court extended the temporary restraining order until February 19, 1975.

In the interim, the parties continued bargaining on all issues other than "Scope". According to the union, the parties have not reached final agreement on fourteen issues, including wages, pensions, medical insurance, holidays, cost-of-living allowance, longevity pay and a no lay-off clause. According to the company, there are no substantial differences between the parties except the "Scope" issue.

Jurisdiction

This action arises under RLA §2, First, 45 U.S.C. §152, First. JAL seeks an injunction against the IAM's resort to self-help, claiming that the union acquired no right to strike because it violated its RLA §2, First, duty "to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules and working conditions, and to settle all disputes." In Chicago and North Western Railway Co. v. United Transportation Union, 402 U.S. 570 (1971), the Supreme Court held that §2, First, imposes a legal obligation upon management and labor that is judicially enforceable. It further held that the Norris-LaGuardia Act, 29 U.S.C. §§ 104, 107, 108, did not

deprive the district courts of jurisdiction to issue injunctions against strikes when such a remedy was the only practical and effective means of enforcing §2, First. Therefore, this Court has jurisdiction pursuant to 28 U.S.C. §§ 1331, 1337.

The Standard to be Applied

In holding that violations of §2, First, are judicially enforceable by injunction, the court in Chicago and North Western Railway, supra, did not specify the standard to be applied in determining what constitutes a §2, First, violation. However, the court cautioned that "great circumspection should be used in going beyond cases involving 'desire not to reach an agreement,' for doing so risks infringement of the strong federal labor policy against governmental interference with the substantive terms of collective-bargaining agreements." 402 U.S. at 579 n. 11.

This Court assumes that §2, First, imposes a higher standard of negotiation efforts than is required by the National Labor Relations Act ("NLRA"), which merely requires the parties to "confer in good faith." The Court concludes that the proper standard to be applied in determining what constitutes a §2, First, violation is whether the party charged with violation of its duty has merely gone through the motions of compliance with the Act's required procedures without a desire to reach an agreement. Chicago and North Western Railway, supra at 579 n. 11; REA Express, Inc. v. Brotherhood

Airline
of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, 358 F. Supp. 760 (S.D.N.Y. 1973); Erie Lackawanna Railway Co. v. Lighter Captains Union, 338 F. Supp. 955 (D.N.J. 1972). See also, Chicago, Rock Island and Pacific Railroad Co. et al. v. Switchmen's Union of North America, 292 F.2d 61 (2d Cir. 1961), cert. denied, 370 U.S. 936 (1962).

Whether this standard has been met must be determined by the whole of the party's conduct at the bargaining table. See Kennedy v. Long Island Rail Road Co., 319 F.2d 366 (2d Cir.), cert. denied, 375 U.S. 830 (1963). The mere inclusion of a non-bargainable demand in a Section 6 Notice, as extensive as the union's in this case, would not be grounds for barring resort to self-help over a dispute which had been adequately processed through the Act's mandatory procedures. REA Express, Inc., supra at 773-74. In labor negotiations of this sort, the parties at times, as a matter of tactics, start from an immoderate position. "Genuineness of negotiations does not necessarily depend upon the nature or reasonableness of the initial proposal." Atlantic Coast Line Railroad Co. v. Brotherhood of Railroad Trainmen, 262 F. Supp. 177, 185 (D.D.C.), aff'd in part, rev'd in part, 383 F.2d 225 (D.C. Cir. 1967), cert. denied, 389 U.S. 1047 (1968). Thus, the ultimate question in this case is did the defendants negotiate

the Section 6 proposals with a sincere purpose to settle the dispute, or did they merely go through the motions of compliance with the required procedures with a "desire not to reach an agreement."

The plaintiff's position may be simply stated. It argues that throughout the negotiations the defendants conditioned agreement upon JAL's making concessions with regard to the IAM's "Scope" proposal. JAL argues that this demand was non-bargainable and, therefore, the IAM violated the standard here enunciated. The Court cannot agree with plaintiff's contention that the defendants conditioned agreement upon acceptance of their "Scope" demand. The Court, however, does find as a fact that "Scope" was of major importance to the IAM and that the union's insistence upon bargaining on "Scope" and JAL's refusal to negotiate the issue were significant factors in the parties' failure to reach agreement.

Thus, the Court must, as a threshold question, determine the bargainability of the "Scope" demand.

The Duty to Bargain on "Scope"

As a preliminary matter, this Court has the power to determine what subjects are within the ambit of "rates of pay, rules and working conditions" upon which the parties have a duty to bargain. "The question of which proposals are bargain-

able is one which, under the Railway Labor Act, may be decided by the courts. By their very nature, such questions cannot be settled by collective bargaining, and the Act does not provide for their settlement by . . . the National Mediation Board . . . ." Brotherhood of Locomotive Firemen & Enginemen v. National Mediation Board, 410 F.2d 1025, 1030 n. 16 (D.C. Cir. 1969). See also, Detroit & Toledo Shore Line Railroad Co. v. United Transportation Union, 396 U.S. 142, 158-59 (1969); International Association of Machinists & Aerospace Workers v. Northeast Airlines, Inc., 473 F.2d 549 (1st Cir.), cert. denied, 409 U.S. 845 (1972). Consequently, it is the duty of this Court to construe the statute.

The defendants argue that the only subjects which an employer has no duty to bargain about are those which are unlawful or expressly prohibited by the RLA. The Court cannot agree with this construction of the statute although the Court does agree with the defendants both that the parties may not bargain about unlawful subjects and that the "Scope" demand was not unlawful. Furthermore, the Court agrees that the parties may bargain about anything else. However, the question presented by this case is what subjects an employer and union must bargain about. That is, what is mandatorily bargainable under the RLA?

The Act speaks in words of limitation. There is only a duty to exert every reasonable effort to make agreements and

settle all disputes concerning rates of pay, rules, and working conditions." See Order of Railroad Telegraphers v. Chicago & North Western Railway Co., 362 U.S. 330, 339 (1960).

The union relies on Fibreboard Paper Products Corp. v. N.L.R.B., 379 U.S. 203 (1964) as establishing subcontracting as a mandatory subject of collective bargaining. The union, however, reads Fibreboard too broadly. The court there merely held that "the type of 'contracting out' involved in this case -- the replacement of employees in the existing bargaining unit with those of an independent contractor to do the same work under similar conditions of employment -- is a statutory subject of collective bargaining . . . . Our decision need not and does not encompass other forms of 'contracting out' or 'subcontracting' which arise daily in our complex economy." 379 U.S. at 215 (emphasis added). The court noted that upon the facts of that case "to require the employer to bargain about the matter would not significantly abridge his freedom to manage the business."[4] Id. at 213.

Thus, Fibreboard did not decide that all subcontracting practices are the subject of mandatory collective bargaining. This case, in effect, is the reverse of Fibreboard. Here, the IAM seeks to require JAL to discontinue subcontracting practices it has followed since the inception of its business in the continental United States and hire its own employees to perform work at locations where such work has never been performed by JAL employees. Fibreboard is, therefore, not

dispositive of the question presented in this case.

The concurring opinion of Justice Stewart more fully explicated the criteria which this Court should apply in determining whether this particular managerial decision is a mandatory subject of collective bargaining.[5]

> Decisions concerning the commitment of investment capital and the basic scope of the enterprise are not in themselves primarily about conditions of employment, though the effect of the decision may be necessarily to terminate employment. . . . [T]hose management decisions which are fundamental to the basic direction of a corporate enterprise or which impinge only indirectly upon employment security should be excluded from that area [subject to collective bargaining]. Id. at 223.

The cases decided under the RLA are of little guidance in resolving the question posed here. These cases deal with the duty of an employer to bargain with the union representing its employees when it proposes to make changes in the working conditions of its existing employees. See, e.g., United Industrial Workers of the Seafarers International Union of North America v. Board of Trustees of the Galveston Wharves, 351 F.2d 183 (5th Cir. 1965); Detroit & Toledo Shore Line Railroad Co. v. Brotherhood of Locomotive Firemen and Enginemen, 267 F. Supp. 572 (N.D. Ohio 1967), aff'd, 401 F.2d 368 (6th Cir. 1968), aff'd sub nom, Detroit & Toledo Shore Line Railroad Co. v. United Transportation Union, 396 U.S. 142 (1969). Here, JAL seeks to make no change in its operations. Rather, the union seeks

to require the company to make such a change.

Cases under the RLA have, however, recognized that there is an area of managerial decision making within which the employer has no duty to bargain with the union representing its employees. In International Association of Machinists, supra, the court held that the airline had no duty to bargain with the union concerning its decision to merge with another airline. In Detroit & Toledo Shore Line Railroad Co., supra, the railroad argued that the establishment of a railway terminal is not bargainable because it was a managerial prerogative. The Court of Appeals stated:

> This argument would have great force if the District Court's judgment prevented the company from constructing physical facilities known as a "terminal" or from using such facilities as a terminal.
> 401 F.2d at 370

Thus, the Court holds that under the RLA, there is an area of managerial decision making or prerogative which is not within the ambit of mandatory bargaining so long as there is no change in the existing working conditions of present employees.

The question then becomes whether the IAM's "Scope" proposal falls into this area. Applying the relevant criteria, the Court concludes that it does.

The union bases its "Scope" demand on the need to provide JAL's present employees with job security. Job security is a legitimate and mandatorily bargainable subject. However, in the

Court's view, implementation of the IAM's "Scope" proposal would only indirectly provide job security. The existing subcontracting practices of JAL do not have an immediate and direct effect on the job security of present employees.[6] See International Association of Machinists, etc., supra at 556-57, 558. Cf. Allied Chemical & Alkali Workers of America v. Pittsburgh Plate Glass Co., 404 U.S. 157, 178-82 (1971). On the other hand, the IAM's "Scope" proposal goes directly to JAL's right to control the direction of its business enterprise. It goes to the heart of the method by which JAL has chosen to operate its business. In this respect, it is not unlike the decision to build a new terminal. There are numerous decisions which an airline makes which affect the job opportunities of its employees. For example, what routes to establish, what types of airplanes to fly, how many flights to schedule, and what fares to charge. Yet, it cannot seriously be contended that an airline has an absolute duty to negotiate with the union representing its employees concerning these decisions. On the evidence presented, the subcontracting practices of JAL fall into this category.

The Court, therefore, holds that the union's "Scope" proposal is not a mandatory subject of bargaining, insofar as it seeks to require JAL to alter the method it has chosen for conducting its business. However, nothing in this decision should be construed as prohibiting the IAM from negotiating

for contract changes which will insure the job security of JAL employees whom the IAM presently represents.

Accordingly, JAL did not violate §2, First, by refusing to bargain on "Scope".

Preliminary Injunction

The question at this juncture is whether the IAM violated its §2, First, duty by insisting on bargaining on the "Scope" proposal, a non-mandatory subject of bargaining, after JAL refused to bargain on this subject. Plaintiff, relying on cases decided under the NLRA, argues that insistence upon a non-mandatory subject of bargaining, in itself and without more, constitutes a per se violation of the bargaining duty imposed by §2, First. See, e.g., National Labor Relations Board v. Wooster Division of Borg-Warner Corp., 356 U.S. 342 (1958); Industrial Union of Marine and Shipbuilding Workers of America v. National Labor Relations Board, 320 F.2d 615, 618 (3d Cir. 1963), cert. denied, 375 U.S. 984 (1964).

This Court declines plaintiff's invitation to engraft rules developed under the NLRA onto the RLA. First, we note that in Chicago & North Western Railway Co., supra, the Court cautioned that "parallels between the duty to bargain in good faith and the duty to exert every reasonable effort, like all parallels between the NLRA and the Railway Labor Act, should be drawn with the utmost care and with full awareness of the

differences between the statutory schemes. Cf. Brotherhood of Railroad Trainmen v. Jacksonville Terminal Co., 394 U.S. 369, 383 (1969)." 402 U.S. at 579 n. 11. The meaning to be attached to this caveat appears from the court's awareness of the dangers attendant upon its holding that strike injunctions may issue to enforce §2, First.

> It creates a not insignificant danger that parties will structure their negotiating positions and tactics with an eye on the courts, rather than restricting their attention to the business at hand. Moreover, the party seeking to maintain the status quo may be less willing to compromise during the determinate processes of the Railway Labor Act if he believes that there is a chance of indefinitely postponing the other party's resort to self-help after those procedures have been exhausted. See Brotherhood of Railroad Trainmen v. Jacksonville Terminal Co., 394 U.S., at 380-381; cf. Hearings, supra, n. 8, at 17, 50, 100 (Mr. Richberg); id., at 190 (Mr. Robertson). Finally, the vagueness of the obligation under §2 First could provide a cover for freewheeling judicial interference in labor relations of the sort that called forth the Norris-LaGuardia Act in the first place.
>
> These weighty considerations indeed counsel restraint in the issuance of strike injunctions based on violations of §2 First. See n. 11, supra. (footnote omitted) Id. at 583

Second, the means for enforcing the standard of bargaining established by §2, First, should be developed on a case-by-case basis. See id. at 577. The per se rule adopted under the NLRA is inconsistent with such a case-by-case approach. So far as research discloses, this is a case of first impression. It would be premature for this Court to adopt the per se rule, urged by the plaintiff, before experience dictated the need for such an approach. Cf., id. at 584.

In short, this Court holds that the IAM's insistence upon bargaining on "Scope", in and of itself, is not sufficient to establish a §2, First, violation under the standard enunciated supra at pp. 13-15.

Turning to the application of that standard to the instant case, the Court holds that, viewing the whole of the union's conduct at the bargaining table, the IAM has not violated its §2, First, duty. The IAM stood willing at all times to bargain about all of the issues which divided the parties. It never took an intransigent position or a "take it or leave it attitude" with respect to any issue. Up to and including the period during which this Court's temporary restraining order was in effect, the parties continued bargaining in an effort to reach agreement. The genuineness of these efforts is evidenced by the fact that there are only fourteen issues remaining upon which the parties have been unable to reach agreement. They include such legitimate subjects of mandatory bargaining as wages, fringe benefits and job security. These issues have been adequately processed through the Act's mandated procedures. The Court cannot conclude, on the present state of the record, that the failure to reach agreement resulted solely from the IAM's insistence upon bargaining on the "Scope" proposal. Nor can it conclude that such insistence reflected a desire on IAM's part not to reach an agreement on the other issues which divide the parties. The parties had bargained about

"Scope" in the negotiating sessions which led to the 1972 contract. Even though JAL had sought the advice of legal counsel on the bargainability of "Scope" at that time and had refused to bargain on that issue, ultimately it made a concession on "Scope" which is embodied in Appendix "D" of the 1972 contract. In light of the prior bargaining history of the parties, the IAM would have been justified in believing that ultimately JAL would make some concession on "Scope" and an agreement would be concluded.

Therefore, the Court holds that the plaintiff is not entitled to a preliminary injunction at this time. The Court cannot conclude that a strike would be solely to compel JAL to accede to the union's "Scope" proposal. Moreover, the court in Chicago and North Western Railway Co., supra, indicated that strike injunctions should issue only when such a remedy is the only practical and effective means of enforcing §2, First. 402 U.S. at 582, 583. If, as plaintiff contends, the "Scope" issue is the only reason for the parties' inability to reach an agreement, this Court's declaration that it is not a mandatory subject of bargaining should be fully effective to protect plaintiff's rights. If subsequent events establish the contrary, plaintiff may return to this Court for whatever relief proves necessary.

The Court's view that the union has not violated its §2, First, duty depends upon its assumption that the IAM did not

make "Scope" a pre-condition to reaching agreement. This Court has continuing jurisdiction to reappraise the union's "desire to reach agreement" in light of evidence not previously available. See Delaware & Hudson Railway Co. v. United Transportation Union, 450 F.2d 603, 623 (D.C. Cir.), cert. denied, 403 U.S. 911 (1971).

Accordingly, plaintiff's motion for a preliminary injunction is denied and the temporary restraining order is dissolved. However, from the testimony presented, it would appear that the parties are not far apart. Although the Court does not enjoin defendants from resorting to self-help, it hopes that the guidance it has now given the parties will enable them to reach an agreement without the interruption of service.

The foregoing shall constitute the Court's findings of fact and conclusions of law.

Settle order on one day's notice in accordance with this opinion.

Dated: February 19, 1975

Robert L. Ward
U. S. D. J.

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NOTES

1 The four proposed changes in Article I Scope of Agreement were:

Paragraph B. Add plant mechanics and radio & electronic mechanics.

Paragraph D. Amend to provide that during the life of this Agreement, the Company shall phase out the contracting of all work covered by this Agreement and employ its own personnel to perform such work.

Add new paragraph.
The Company agrees that the positions and work within the scope of this Agreement belong to the employees covered hereby and nothing in this Agreement shall be construed to permit the removal of positions or work from coverage of this Agreement or further to permit the Company to employ alien employees in such positions or work without written consent of the Union.

Add new paragraph.
The Company agrees that it shall not layoff any employees in the bargaining unit during the term of this Agreement.

2 Appendix "D":

This letter will confirm the understandings reached in Mediation Conferences regarding the Union's request that the Company furnish a definite timetable for manning all Stations with Company employees, and for certain changes in ARTICLE I (SCOPE OF THE AGREEMENT).

The Company agrees that it will not contract out work at Stations where its IAM employees are currently doing work in the classifications (Crafts and Classes) covered by the Agreement, without prior notice to and negotiations with the Union (IAM).

The Company agrees to open certain jobs at JFK and at SFO, as follows:

A. Beginning no later than October 1, 1973, the maintenance work performed on the equipment in the Cargo Warehouse at JFK International Airport, New York, now performed by Mohawk, will be performed by employees of the Company who are members of the Union.

B. The Company employees in the classification of Plant Mechanics will perform work in connection with the maintenance and repairs of the ground equipment at SFO and at JFK as soon as the Company can lease adequate space to establish its own ground equipment maintenance facilities at each of said Stations.

The Company is currently making every effort to secure space for the ground equipment maintenance facilities at SFO and at JFK and will continue its efforts. Periodic progress reports will be made to the Union in connection with this matter.

In addition, there will be no layoffs (furloughs) as set forth in the Letter of Agreement between Japan Air Lines Co. Ltd., and the Union.

Appendix "E":

NO FURLOUGH

With regard to the Mediation Agreement reached May 18, 1973, the parties hereto agree that upon receipt by the Company from the Union of written notification that such Mediation Agreement has been ratified, the Company:

1. Will not during the period commencing with receipt of such notice of ratification and extending through the life of the Agreement, furlough any employee on the payroll on the date of receipt by the Company of such notice. Provided, however, the Company may furlough employees when any one or more of the following conditions exist:

   A. An employee fails to exercise his seniority if it would enable him to remain in the employ of the Company in his then current classification.

B. The layoff is caused by:

(1) An act of God.
(2) A war emergency.
(3) Revocation of the Company's operating certificate or certificates.
(4) Grounding of a number of Company aircraft which would require reduction in force.
(5) A strike.
(6) Picketing of Company premises.
(7) Work stoppage which would substantially interfere with the operations of the Company.
(8) Any cessation of work because of circumstances beyond the Company's control.

2. Disciplinary layoffs are specifically exempt from this Agreement.

This Agreement is made for and in consideration of the withdrawal by both parties of all disputed issues regarding the Scope of the Agreement arising out of the respective Section 6 Notices giving rise to the Mediation Agreement referred to above.

3 The Court's recollection in this regard differs from the transcript which indicates the contrary.

4 Courts have consistently refused to extend the duty to bargain recognized in Fibreboard to analogous management decisions which are more central to management's autonomous control over the direction of its business' operations. In Textile Workers Union of America v. Darlington Manufacturing, 380 U.S. 263 (1965), the court held that an employer had an absolute right to terminate its entire business. In N.L.R.B. v. Acme Industrial Products, Inc., 439 F.2d 40 (6th Cir. 1971), the court held that the employer had no duty to bargain over its decision to relocate part of its manufacturing operations to another plant. Accord, N.L.R.B. v. Rapid Bindery, 293 F.2d 170, 176 (2d Cir. 1961).

These NLRA cases carve out an area of managerial decision making within which the employer is not required to bargain.

5 This Court reads the decision in Allied Chemical & Alkali Workers of America v. Pittsburgh Plate Glass Co., 404 U.S. 157, 178-82 (1971) as adopting the rationale contained in Justice Stewart's concurring opinion.

6 As the Court understands it, the present contract gives employees who are laid off the right to "bump" into other jobs and stations, replacing JAL employees with less seniority. JAL's subcontracting practices, in effect, limit the opportunity for laid off employees to take advantage of this right.

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ORDER DENYING PRELIMINARY INJUNCTION

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SAME TITLE

Plaintiff having moved this Court by order to show cause for a preliminary injunction pending final determination of this action, and this cause having come on to be heard on plaintiff's said motion for a preliminary injunction, and the Court having considered the complaint and affidavits in support of said motion and the verified answer and affidavits in opposition thereto, and having heard oral evidence and argument in open Court, and the Court having made its findings of fact and conclusions of law in its opinion filed February 19, 1975 it is

ORDERED, that plaintiff's said motion for a preliminary injunction be and the same hereby is denied without prejudice to its renewal upon a showing of changed circumstance or substantial additional evidence not previously available, in accordance with the Court's opinion, and the temporary restraining order heretofore issued be and the same is hereby dissolved.

Dated: New York, New York
February 21, 1975
10:30 A.M.

/s/ ROBERT J. WARD
U. S. D. J.

AFFIDAVIT OF SHELDON ENGELHARD

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SAME TITLE

STATE OF NEW YORK) ss.:
COUNTY OF NEW YORK)

SHELDON ENGELHARD, being duly sworn deposes and says:

I am a member of the firm of Vladeck, Elias, Vladeck & Lewis, P.C., the attorneys for the defendants in the above entitled action, and am fully familiar with all of the facts and circumstances involved in this action.

Among the issues that were the subject of the action was whether the "Scope" proposal by the defendants, International Association of Machinists and Aerospace Workers, AFL-CIO (hereafter "IAM"), pursuant to its Section 6 Notice filed in accordance with provisions of the Railway Labor Act (hereafter "RLA"), was a mandatory subject of collective bargaining. The IAM contended that it was a mandatory subject of bargaining, contrary to the position of plaintiff, Japan Air Lines Company, Ltd. (hereafter "JAL"). On or about February 19, 1975, the Court, after a hearing on plaintiff's motion for a preliminary injunction before the Honorable Robert J. Ward, U.S. District

Judge, in its decision which constituted the Court's findings of fact and conclusions of law, held in part that "Scope" was not an "unlawful" proposal but was not a mandatory subject of collective bargaining.

Throughout the hearing, defendants made known to the Court that if "Scope" were to be held an unlawful proposal or not a mandatory subject of bargaining, even if the preliminary injunction sought by JAL were not issued, the issue of "Scope" would be appealed.

Indeed, during the collective bargaining negotiations that were continuing simultaneously with the hearings in this action, the IAM had proposed to JAL that in the event this Court or any other court on appeal, determined that "Scope" was a mandatory subject of bargaining, the parties would agree to reopen negotiations; this was likewise made known to the Court. The proposal, however, was turned down by JAL.

Following the decision of the Court, a proposed "Order Denying Preliminary Injunction" was drafted which provided in part as follows:

> "...and it is further,
> ORDERED, that defendants' "Scope" proposal while not an unlawful proposal, is not a mandatory subject of bargaining insofar as it seeks to require plaintiff to alter the method it has chosen for continuing its business,"

Inadvertently, the proposed Order that was submitted to the Court and served upon the attorneys for JAL did not include the above quoted provision. It is believed that if that proposed Order was signed by the Judge, it would clearly set forth the issue which either then or shortly thereafter would be the subject of an appeal or further litigation.

I am informed that the parties in fact have agreed to a new collective bargaining agreement, subject to ratification by the employees in the collective bargaining unit. However, the new agreement, if ratified, would be effective for twenty-six (26) months including that period of time that has already elapsed since the termination of the prior collective bargaining agreement, October 30, 1973. It follows that within a matter of months, the parties will again begin negotiating for a new collective bargaining agreement in which "Scope" will undoubtedly be a proposal by the IAM.

In consideration of the efforts made during the course of the hearings to preserve the issue of "Scope", the Court is respectfully urged to permit the defendants to resettle the Order in the manner and form attached to include the provisions originally intended and incor-

porating in addition thereto those provisions inserted by the Court when the "Order Denying Preliminary Injunction" of February 21, 1975 was signed.

/s/ SHELDON ENGELHARD

Sworn to before me
this 28th day of
February, 1975.

/s/
Robert L. Jauvtis, Esq.
Notary Public, State of New York
No. 41-4522628
Qualified in Queens County
Commission Expires March 30, 1976

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -x

JAPAN AIR LINES COMPANY, LTD.,

Plaintiff,

-against-

INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO ("IAM"), et al.,

Defendants.

75 Civ. 166 (RJW)

AFFIDAVIT IN OPPOSITION TO MOTION FOR RESETTLEMENT OF ORDER

- -x

STATE OF NEW YORK)
) SS.:
COUNTY OF NEW YORK)

MURRAY GARTNER, being duly sworn, deposes and says:

1. I am a member of the firm of Poletti Freidin Prashker Feldman & Gartner, attorneys for plaintiff in the above-entitled action, and I am fully familiar with all prior proceedings in this matter. I make this affidavit in opposition to defendants' motion, made on March 4, 1975, for resettlement of the Court's Order, entered herein on February 21, 1975, denying plaintiff's motion for preliminary injunction.*

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* The parties stipulated on March 5, 1975 that the Notice of Settlement of Order, and accompanying papers, served on plaintiff's attorneys on March 4, 1975, would be deemed a Notice of Motion for Resettlement of Order.

2. Defendants ask the Court to amend its order of February 21, 1975 by adding a paragraph, said to have been inadvertently omitted from the proposed Order defendants submitted to the Court on February 20, 1975. That paragraph would "Order" "that defendants' 'Scope' proposal while not an unlawful proposal, is not a mandatory subject of bargaining insofar as it seeks to require plaintiff to alter the method it has chosen for conducting its business." The purpose of the proposed amendment, as explained in the affidavit of Sheldon Engelhard, Esq., sworn to the 28th day of February, 1975, is to "clearly set forth the issue which either then or shortly thereafter would be the subject of an appeal or further litigation" (Engelhard Aff., p. 3).

3. Defendants' failure to propose the inclusion of a ruling on the "Scope" issue in its proposed order following the Court's decision of February 19, 1975 does not mean that the Court failed to consider that subject in devising its order. On the contrary, plaintiff had proposed an order on the "Scope" question as part of its proposed preliminary injunction submitted to the Court on February 12, 1975 and had suggested the incorporation of the Court's decision on the "Scope" issue in the order which plaintiff presented for settlement on February 20, 1975 in accordance with the Court's decision of February 19, 1975. Copies of the said two proposed orders are annexed hereto as Exhibits 1 and 2.

4. Defendants' objective of an "appeal or further litigation" based on this Court's ruling on the "Scope" issue will not be served by an amendment of the February 21, 1975 order at this time in the manner proposed by defendants. The new labor agreement which was reached by plaintiff and defendant IAM, referred to in Mr. Engelhard's affidavit, was ratified and signed on March 7, 1975 and continues by its terms to December 31, 1975. There is therefore no existing contract dispute between the parties, no pending negotiations, and no need for any interlocutory order about how those negotiations are to be conducted. It does not seem likely that the Court of Appeals would entertain an appeal from the revised order proposed by defendants, both because any application of it to past negotiations is moot and because it does not order defendants to do anything.

5. Revision of the February 21 order, as proposed by defendants, moreover, will not contribute to the final resolution of the pending action. For one thing, it does not accurately set forth the Court's decision on the "Scope" issue, as plaintiff's proposed order of February 20, 1975 (Exhibit 2 hereto) does. For another, it does not take account of the prospect of defendants' insistence on "Scope" proposals in future negotiations. Thus, as Mr. Engelhard's affidavit states, "... within a matter of months, the parties will again begin negotiating for a new collective bargaining agreement in which 'Scope' will undoubtedly be a proposal by the IAM." (Engelhard Aff., p. 3).

6. It would seem, therefore, that the proper procedure for a definitive ruling on the parties' respective obligations with respect to "Scope" demands is not a belated motion to resettle an order denying a motion for a preliminary injunction which is now moot. Rather, further proceedings should be had in this action toward a final order defining the rights and obligations of the parties in their negotiating relationship. To that end, plaintiff respectfully solicits a conference with the Court about further proceedings. In the meantime, defendants' motion to amend the February 21, 1975 order should be denied.

s/ Murray Gartner
MURRAY GARTNER

Sworn to before me
this 12th day of May, 1975

s/ Edward Brill
Notary Public

EDWARD A. BRILL
Notary Public, State of New York
No. 4503338
Qualified in New York County
Commission Expires March 30, 1977

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- x

JAPAN AIR LINES COMPANY, LTD.,

Plaintiff,

-against-

INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO ("IAM"), et al.,

Defendants.

- x

STIPULATION AND ORDER

Pursuant to Rule 65(a) F.R.C.P.

75 Civ. 166 (RJW)

IT IS HEREBY STIPULATED AND AGREED, by and between the attorneys for the respective parties hereto, subject to the approval of the Court, that the trial on the merits be deemed advanced and consolidated with the evidentiary hearing on the plaintiff's application in this action for a preliminary injunction, heard on January 16, 17, February 2, 3, 4, 5, 1975, and that the record of the said hearing insofar as it consists of admissible evidence shall be the trial record.

POLETTI FREIDIN
PRASHKER FELDMAN & GARTNER

By _____
Attorneys for Plaintiff

VLADECK, ELIAS, VLADECK & LEWIS

By _____
Attorneys for Defendants

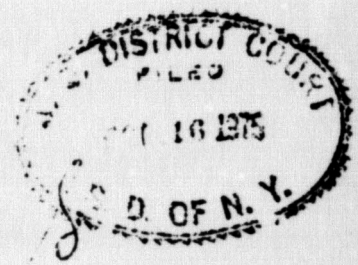
SO ORDERED: OCTOBER 15, 1975

_____
U.S.D.J.

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JAPAN AIR LINES COMPANY, LTD., Plaintiff,	:	75 Civ. 166 (RJW)
- against -	:	
INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO ("IAM"); IAM DISTRICT LODGE NO. 151; FUSAO OGOSHI, individually and as Senior Business Representative of IAM District Lodge No. 151; ROBERT QUICK, individually and as Grand Lodge Representative of IAM; ROLLO SAVINO, GREGORY McLAUGHLIN, WILLIAM WHITBREAD, MAX SUZUKI, TATSUO SHIRAISHI, STANLEY NAGAOKA, YOSHIAKI KARASHIMA, GARY HIROSHIMA and HIROSHI TARUMI, individually and as representatives of a class consisting of all of plaintiff's employees represented by IAM and employed in the United States, Defendants.	:	FINAL DECLARATORY JUDGMENT



This cause having come on to be heard on plaintiff's Motion for Preliminary Injunction, and the Court having read and considered the Verified Complaint and Answer thereto, and the Court having held an evidentiary hearing on said Motion on January 16, 1975 and on February 4, 5, 6 and 7, 1975, at which hearing the Court heard oral testimony and received written exhibits, and upon hearing the arguments of counsel, the Court

having issued and filed its Opinion, dated February 19, 1975, which shall constitute its Findings of Fact and Conclusions of Law in this matter, the parties having stipulated that the record of the hearing on plaintiff's Motion for Preliminary Injunction be treated as the record of the trial on the merits of the above matter, pursuant to Rule 65(a) of the Federal Rules of Civil Procedure, and the Court having made its Order, dated February 21, 1975, denying plaintiff's Motion for a Preliminary Injunction, and the parties seeking a declaration of their rights,

IT IS NOW, THEREFORE, ORDERED, ADJUDGED, DECLARED AND DECREED, that the proposal of the defendant, INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO ("IAM"), that Paragraph D of the "Scope of Agreement" Article of the Agreement between JAPAN AIR LINES COMPANY, LTD. ("JAL") and IAM be amended "to provide that during the life of the Agreement, the Company shall phase out the contracting of all work covered by this Agreement and employ its own personnel to perform such work" (hereinafter referred to as the "Scope" proposal), while not an unlawful proposal, is not a mandatory subject of bargaining; and it is

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FURTHER ORDERED, ADJUDGED, DECLARED AND DECREED, that JAL has no duty under the Railway Labor Act (45 U.S.C. §§151-188) to bargain with the IAM over a "Scope" proposal which would require JAL to alter the method it has heretofore chosen for conducting its business and to discontinue existing contractual arrangements for performance of work or to hire additional employees, establish facilities or buy equipment to perform work at any location, not now being performed thereby its own employees; and it is

FURTHER ORDERED, ADJUDGED, DECLARED AND DECREED, that defendants may not make acceptance by JAL of the "Scope" proposal a condition of an agreement between the parties; and it is

FURTHER ORDERED, ADJUDGED, DECLARED AND DECREED, that the parties may voluntarily bargain concerning any "Scope" proposal.

Dated: New York, N.Y.
October , 1975.

Robert J. Ward
U.S.D.J.

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT COURT OF NEW YORK

JAPAN AIR LINES COMPANY, LTD., Plaintiff, - against - INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO ("IAM"); IAM DISTRICT LODGE NO. 151; FUSAO OGOSHI, individually and as Senior Business Representative of IAM District Lodge No. 151; ROBERT QUICK, individually and as Grand Lodge Representative of IAM; ROLLO SAVINO, GREGORY McLAUGHLIN, WILLIAM WHITBREAD, MAX SUZUKI, TATSUO SHIRAISHI, STANLEY NAGAOKA, YOSHIAKI KARASHIMA, GARY HIROSHIMA and HIROSHI TARUMI, individually and as representatives of a class consisting of all of plaintiff's employees represented by IAM and employed in the United States, Defendants.	NOTICE OF APPEAL 75 Civ. 166 (R.J.W.)

S I R S :

NOTICE is hereby given that International Association of Machinists and Aerospace Workers, AFL-CIO ("IAM"); IAM DISTRICT LODGE NO. 151; FUSAO OGOSHI, individually and as Senior Business Representative of IAM District Lodge No. 151; ROBERT QUICK, individually and as Grand Lodge Representative of IAM; ROLLO SAVINO, GREGORY McLAUGHLIN, WILLIAM WHITBREAD, MAX SUZUKI, TATSUO SHIRAISHI, STANLEY NAGAOKA, YOSHIAKI KARASHIMA, GARY HIROSHIMA and HIROSHI TARUMI, individually and as representatives of a class etc., defendants above named, hereby appeal to the United States Court of Appeals for the Second Circuit from

each and every part of a Final Declaratory Judgment of Judge Robert J. Ward of the United States District Court for the Southern District of New York dated October 15, 1975 and entered October 17, 1975.

Dated: New York, New York
November 12, 1975

VLADECK, ELIAS, VLADECK & LEWIS, P.C.

BY: S/ SHELDON EGGLETON

A member of the firm
Attorneys for Defendants
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